IMPLEMENTATION OF THE MULTILATERAL TRADE NEGOTIATIONS

HEARINGS

BEFORE THE

SUBCOMMITTEE ON INTERNATIONAL TRADE

OF THE

COMMITTEE ON FINANCE
UNITED STATES SENATE

NINETY-SIXTH CONGRESS

FIRST SESSION

FEBRUARY 21 AND 22, 1979

Printed for the use of the Committee on Finance

U.S. GOVERNMENT PRINTING OFFICE
42-978 WASHINGTON : 1979 HG 96-11

COMMITTEE ON FINANCE

RUSSELL B. LONG, Louisiana, *Chairman*

HERMAN E. TALMADGE, Georgia
ABRAHAM RIBICOFF, Connecticut
HARRY F. BYRD, Jr., Virginia
GAYLORD NELSON, Wisconsin
MIKE GRAVEL, Alaska
LLOYD BENTSEN, Texas
SPARK M. MATSUNAGA, Hawaii
DANIEL PATRICK MOYNIHAN, New York
MAX BAUCUS, Montana
DAVID L. BOREN, Oklahoma
BILL BRADLEY, New Jersey

ROBERT DOLE, Kansas
BOB PACKWOOD, Oregon
WILLIAM V. ROTH, Jr., Delaware
JOHN C. DANFORTH, Missouri
JOHN H. CHAFEE, Rhode Island
JOHN HEINZ, Pennsylvania
MALCOLM WALLOP, Wyoming
DAVID DURENBERGER, Minnesota

MICHAEL STERN, *Staff Director*
ROBERT E. LIGHTHIZER, *Chief Minority Counsel*

SUBCOMMITTEE ON INTERNATIONAL TRADE

ABRAHAM RIBICOFF, Connecticut, *Chairman*

HERMAN E. TALMADGE, Georgia
HARRY F. BYRD, Jr., Virginia
MIKE GRAVEL, Alaska
DANIEL PATRICK MOYNIHAN, New York
MAX BAUCUS, Montana
BILL BRADLEY, New Jersey

WILLIAM V. ROTH, Jr., Delaware
JOHN C. DANFORTH, Missouri
JOHN HEINZ, Pennsylvania
ROBERT DOLE, Kansas
JOHN H. CHAFEE, Rhode Island

CONTENTS

PUBLIC WITNESSES

COMMUNICATIONS

ADDITIONAL INFORMATION

IMPLEMENTATION OF THE MULTILATERAL TRADE NEGOTIATIONS

WEDNESDAY, FEBRUARY 21, 1979

U.S. SENATE,
SUBCOMMITTEE ON INTERNATIONAL TRADE
OF THE COMMITTEE ON FINANCE,
Washington, D.C.

The subcommittee met, pursuant to notice, at 10 a.m. in room 2221, Dirksen Senate Office Building, Hon. Abraham Ribicoff (chairman of the subcommittee) presiding.

Present: Senators Ribicoff, Long, Baucus, Danforth, and Heinz.

[The press release announcing these hearings follows:]

[Press release]

U.S. SENATE, COMMITTEE ON FINANCE, SUBCOMMITTEE ON INTERNATIONAL TRADE

FINANCE SUBCOMMITTEE ON INTERNATIONAL TRADE TO HOLD HEARINGS ON IMPLEMENTATION OF THE MULTILATERAL TRADE NEGOTIATIONS

The Honorable Abraham Ribicoff (D., Conn.), Chairman of the Subcommittee on International Trade of the Committee on Finance, and the Honorable William V. Roth, Jr. (R., Del.), Ranking Minority Member of the Subcommittee, today announced that the Subcommittee will hold public hearings on certain issues relating to implementation of the Multilateral Trade Negotiations. The hearings will begin at 10:00 A.M. on Wednesday, February 21, and Thursday, February 22, 1979, in Room 2221 Dirksen Senate Office Building.

Procedures Under the Trade Act of 1974

Article I, section 8, clause 3 of the Constitution confers on Congress the power to regulate commerce with foreign nations. At the same time, the President is the representative of the United States in international negotiations, including trade negotiations. The Trade Act of 1974 establishes procedures enabling the two branches to coordinate their activities with respect to international trade negotiations and enabling Congress to reach, relatively rapidly, a final decision to accept or reject the results of trade negotiations.

Under section 102 of the Trade Act of 1974 (19 U.S.C. 2112), a trade agreement providing for the harmonization, reduction, or elimination of a barrier to (or other distortion of) international trade enters into force with respect to the United States if (and only if) an implementing bill for that agreement is enacted into law. An implementing bill is submitted to the Congress by the President and contains provisions necessary or appropriate to implement the trade agreement.

Under section 151 of the Act (19 U.S.C. 2191), procedures for Congressional consideration of implementing legislation are established. These procedures are intended to result in a final Congressional decision on an implementing bill within 90 working days after the bill is introduced. Important features of the procedures are automatic discharge of committees after a specified period and limitation of debate to 20 hours. Implementing legislation recommended by the President may not be amended in committee or on the floor of either House.

Because of the special nature of the Trade Act legislative procedures, section 102 of the Act requires close consultation between Congress and the President on trade negotiations. Consultation during the negotiations has been carried on by official Congressional advisors to the United States delegation to the Multilateral Trade Negotiations, including members of the Finance Committee. These advisors have been supplied information on the progress of the negotiations and have been consulted on numerous negotiating issues.

On January 4, 1979, the President notified Congress of his intention to enter into trade agreements (44 Fed. Reg. p. 1933 ff. (1979)). Under section 102 of the Trade Act, the submission of this notice means the President may enter into trade agreements at any time after April 4, 1979. As the negotiations come to an end, consultation with respect to implementing legislation must now begin.

Details of many of the trade agreements are still being negotiated. However, because descriptions of the agreements are now available to the public (44 Fed. Reg. pp. 1935 ff. (1979)) Senator Ribicoff and Senator Roth believe it will be useful for the members of the Finance Committee to hear testimony from interested parties on changes in existing laws which may be affected by the trade agreements before consultations with the Administration on implementing legislation begin. This testimony may be addressed both to changes in existing law which may be necessary to implement trade agreements and to other changes in existing law which may be appropriate. The Subcommittee is most interested in receiving comments on aspects of the implementing legislation within the Committee's jurisdiction, including the subjects described in sections A to E below.

A. Countervailing duties

Code provisions.—According to the President's January 4 notice, the Code on Subsidies and Countervailing Duties contains:

"1. Flat prohibition of export subsidies on non-primary products as well as primary mineral products.

"2. A definition of export subsidy which abolishes the existing dual pricing requirement and provides an updated illustrative list.

"3. With respect to domestic subsidies, recognition that while they are often used to promote important objectives of national policy, they can also have harmful trade effects; relief (including countermeasures) available where such subsidies (a) injure domestic producers; (b) nullify or impair benefits of GATT concessions (including tariff bindings); or (c) cause serious prejudice to the interests of other signatories.

"4. Recognition that where domestic subsidies are granted on non-commercial terms, trade distortions are especially likely to arise; commitment by signatories to 'take into account' conditions of world trade and production (e.g., prices, capacity, etc.) in fashioning their subsidy practices.

"5. Improved discipline on use of export subsidies for agriculture. Prohibition on such subsidies when used in a manner which (a) displaces the exports of others or (b) involves material price undercutting in a particular market.

"6. Provision for special and differential treatment under which LDCs could not use export subsidies where such subsidies adversely affect the trade or production interests of other countries; provision for negotiated phase-outs of export subsidies by LDCs.

"7. Tight dispute settlement process (panel findings regarding rights and obligations within 120 days of complaint) to enforce discipline of code. This should provide growing body of case law.

"8. Greater transparency in subsidy practices (including provision for notification to the GATT of practices of other countries.)

"9. For countervailing duty actions, an injury and causation test designed to afford relief where subsidized imports (whether an export or domestic subsidy is involved) impact on U.S. producers either through volume or through effect on prices.

"10. Greater transparency in the administration of countervailing duty laws/regulations."

More specifically, the Code now being negotiated may include:

(1) A requirement that subsidized imports cause injury or the threat thereof to domestic producers of like products before countervailing duties may be unilaterally imposed.

(2) A procedure permitting a new remedy with respect to subsidized goods, the imposition of countermeasures authorized by the committee of signatories to the Code, after an international dispute settlement procedure limited to approximately 150 days. Countermeasures would be available against any subsidy causing injury to a domestic industry, nullification or impairment of benefits accruing to a country under the General Agreement on Tariffs and Trade, or serious prejudice to the interests of any country which adheres to the Code.

(3) A requirement that, for purposes of applying countervailing duties, the questions of the existence of a subsidy and injury be considered simultaneously before the initiation of an investigation and after a preliminary positive finding that a subsidy exists.

(4) A requirement that, for purposes of countervailing duties, "provisional measures" such as payment of estimated countervailing duties or bonds may be required after a preliminary positive finding that a subsidy exists is made.

(5) A requirement that countervailing duties may be imposed retroactively (A) for the period during which estimated duty payments or bonds have been imposed if there is an injury finding, (B) for the period beginning 90 days before estimated duty payments or bonds are imposed in "critical circummstances", or (C) not at all if there is a finding of a threat of injury.

(6) A provision permitting a countervailing duty investigation to be terminated if (A) the exporting country agrees to eliminate or reduce the subsidy so that it no longer causes injury, or (B) exporters voluntarily undertake to increase their prices or to reduce or stop their exports.

Issues.—In addition to suggestions for improving existing law, the Subcommittee is particularly interested in receiving testimony with respect to the following issues:

(1) *Administering agency.*—Which agency or agencies should administer the counterveiling duty law?

(2) *Definition of "injury".*—The definition of injury in the Code may be quite broad. Factors which may be considered include whether subsidized imports (A) depress prices to a significant degree, (B) prevent price increases, which otherwise would have occurred, to a significant degree, (C) affect return on investment, and (D) reduce ability to raise capital. What should be the injury test in the countervailing duty law? Should factors be added to the existing injury test for duty-free imports? Should the injury test, and other Code benefits, apply to imports from countries which do not sign the Code?

(3) *Definition of "like product".*—The Code uses the term "like product" for purposes of determining injurious effects of imports. Should the definition of "like product" in the countervailing duty law include notions of substitutability or competitive impact?

(4) *Duties smaller than the amount of subsidy.*—The Code may permit countervailing duties less than the amount of subsidy if the lesser duty would "remove the injury." Should the countervailing duty law permit duties smaller than the amount of subsidy and, if so, when?

(5) *Termination of investigation.*—The Code may permit termination of a countervailing duty investigation if certain agreements or undertakings with respect to prices, quantities, or subsidy amounts are made. Should administrators of the countervailing duty law be permitted to terminate investigations and, if so, under what conditions?

(6) *Judicial review.*—To what extent should administration of the countervailing duty law be subject to judicial review? If there is judicial review, should it be *de novo*, based on substantial evidence, or some other standard? If there is judicial review, should it be subject to time limits or other procedures designed to insure rapid decisions?

(7) *Dispute settlement apparatus.*—An important issue which is present in the Code on Subsidies and Countervailing Duties and also appears in a number of other codes being negotiated is the manner in which the United States should approach and use the dispute settlement apparatus established in such codes. In a number of the codes, the results of the dispute settlement process will be an evolving set of rules governing international trade in that area among signatories to the code and offering a basis for rules which even non-signatories may adopt. Absent effective use of the dispute settlement apparatus by the United States, adherence to some of the codes by the United States could lead to minimal, uncertain, or perhaps harmful results.

What agency should represent the United States in the dispute settlement process? What procedure should be esablished to permit private parties to raise questions about practices which they wish pursued in the dispute settlement forum? How should decisions on the matters to be pursued internationally be made? What role, if any, should private parties play in the representations of the United States in the dispute settlement forum? How should international decisions calling into question U.S. practices be responded to domestically (e.g., Presidential discretion to conform U.S. practices, conforming legislation submitted to Congress, etc)?

B. Antidumping duties

Code provisions.—In his January 4 notice, the President stated that "the injury/casualty/regional market criteria and the transparency provisions (i.e., public notice requirements, etc.)" negotiated in the Code on Subsidies and Countervailing Duties may be introduced into the Antidumping Code negotiated during the Kennedy Round.

Issues.—In addition to suggestions for improving existing law, the Subcommittee particularly interested in receiving testimony with respect to the following issues:

(1) *Administering agency.*—Which agency or agencies should administer the antidumping law?

(2) *Relation to countervailing duty concepts.*—Should the countervailing duty and antidumping laws be the same or similar with respect to injury, causation, or the regional industry concept?

C. Safeguards

Code provisions.—According to the President's January 4 notice, the Code on Safeguards supplements and improves Article XIX of the General Agreement on Tariffs and Trade to establish an "international safeguard procedure which takes into account all forms of import restraints countries use in response to injurious competition or threat of such competition.... It provides for as broad a coverage of measures as possible—including export restraints which are commonly used for safeguard purposes. It contains improved criteria to be met in taking safeguard action and a set of conditions to which individual safeguard measures must conform. If countries adhere to these criteria and conditions, the need for retaliation against safeguard actions should be reduced.

"The code also contains provisions to encourage more openness and due process in other countries' domestic safeguard procedures. Improved international discipline in the use of safeguard measures would be provided by procedural reform and the establishment of a committee of signatories which would be given surveillance and dispute settlement functions.

"Whereas present GATT provisions permit safeguard actions only on a nondiscriminatory basis, the new code would permit some scope for selective action against imports from particular countries when these are the cause of serious injury. Selective action would however, be subject to certain conditions."

More specifically, the Code now being negotiated may include:

(1) A definition of "domestic industry" including domestic producers whose collective output of products like or directly competitive with the imported products constitutes a major proportion of the total domestic production of those products. The term "domestic industry" is also defined to include producers in unified national markets.

(2) Requirements: (a) a safeguard measure covers only the product or products causing the injury (b) the measure be applied for a limited period of time (c) once a measure is removed it should not be reapplied before the lapse of a period of time (d) that a measure should, to the extent feasible, be progressively liberalized during the period of its application and (e) that the measure should not reduce imports below the level of a previous representative period.

(3) The Code may permit non-MFN application of safeguard measures. Article XIX of the General Agreement on Tariffs and Trade now requires a country taking safeguard action to restrict imports of the product concerned from all sources—that is, to take action on a most-favored-nation (MFN) basis.

(4) A requirement that developed countries make an effort to avoid safeguard actions on products of special interest to developing countries and, if action is taken, to limit, if feasible, its extent and duration. When safeguard actions are taken, signatories might permit imports from developing countries which are small suppliers or new market-entrants to continue to have market access with moderate growth on favorable terms. Developed signatories, however, would reserve the right to withdraw this favorable treatment from individual developing countries when such countries, or relevant sectors within those countries, achieve higher levels of development or become competitive.

(5) A requirement that all of the existing safeguard actions taken pursuant to the General Agreement on Tariffs and Trade Article XIX be terminated within a specified period after the Code enters into force unless such actions were extended pursuant to the new code.

Issues.—The Subcommittee is interested in receiving testimony on the following issues regarding implementing legislation and improvements in existing law as it relates to the safeguards code:

(1) *Developing countries.*—How should U.S. law be drafted to provide for special and differential treatment for developing countries?

(2) *Voluntary restraint agreements.*—If inter-industry arrangements or voluntary export restraint agreements are made subjuct to the coverage of the code, what, if any, conditions should be required in domestic legislation before the agreements are sanctioned by our Government?

(3) *Distinguishing between signatories and nonsignatories.*—If legislation is to be drafted that distinguishes between safeguard action taken against code signatories and non-signatories, what should be the varying provisions?

(4) *Sections 201 to 203.*—What improvements should be made in sections 201 through 203 of the Trade Act of 1974 (relating to import relief) ?

(5) *Unilateral action.*—If unilateral selective safeguard action is permitted under the code, what criteria and procedures should be established for such action?

(6) *Definition of "domestic industry".*—In light of possible code revisions of the definition of "domestic industry," how should domestic law reflect these changes?

D. *Customs valuation*

Code provisions.—The President's January 4 notice states that "a new set of international rules for customs valuation has been developed in the multilateral trade negotiations. An attempt has been made to ensure that these new rules are fair and simple, that they conform to commercial reality, and that they will allow traders to predict with a reasonable degree of accuracy the duty that will be assessed on their products. It is interesting to note that there are strong similarities between the proposed new international rules and section 402 of the Tariff Act of 1930, which governs the valuation of many U.S. imports."

The proposed code contains a requirement that valuation systems be based on objective criteria. The primary standard for determining the value of imports for customs purposes would be based on the transaction value of the imported goods. Four alternative standards may be resorted to in a prescribed order whenever a value cannot be determined under the new higher ranking valuation standard. More specifically:

(1) The primary method of valuation shall be based on the "transaction value" of the imported goods, which is the price actually paid or payable for the goods, with additions for certain costs, charges, and expenses incurred with respect to the imported goods that are not included in the price actually paid or payable. These additions cover such items as selling commissions, brokerage fees, container costs, packaging costs, royalty and license fees, and assists. The only assists for which addition can be made to the price are assists such as materials, dyes, and tools, and engineering, development, artwork, design work, and plans and sketches undertaken elsewhere than in the country of importation.

(2) The primary method cannot be used if the seller places restrictions on the buyer as to the use or disposition of the goods, the sale or price of the goods is contingent on some factor for which a value cannot be determined, the seller in partial payment for his goods receives some percentage of the proceeds from the resale of the goods by the importer and the transaction value cannot be adjusted to reflect this amount, or the buyer and seller are related and their relationship influences the price of imported goods.

(3) If the primary method cannot be used, alternative methods of valuation would be used in the following order of preference: (1) the transaction value of identical goods for export to the same country of importation at or about the same time as the sale of the imported goods. (2) The transaction value of similar goods for export to the same country of importation at or about the same time as the sale of the imported goods. If a valid customs value cannot be established under either the primary standard or the first or second alternative methods, then the importer may choose either the third or fourth alternative method: (3) Deductive value computed by subtracting from the resale price of the imported goods all the elements of value that have been added to the goods after they have been imported. (4) Computed value, which consists of material or manufacturing costs, profits and general expenses. This method is similar to the constructed value method in current U.S. Customs valuation statutes.

(4) If the customs value of imported goods cannot be determined under any of the previously described standards, the value would be determined using reasonable means consistent with the principle and general provisions of the Code and Article VII of the General Agreement on Tariffs and Trade.

(5) The Code permits application of its provisions on either an FOB or a CIF basis. Technical provisions in the Code cover currency conversion, rapid clearance of goods, domestic appeal rights, and publication of law and regulations affecting customs valuation.

Issues.—The Subcommittee is interested in receiving recommendations on how this Code, as outlined above, should be implemented in domestic legislation.

E. Licensing

Code provisions.—The President's January 4 notice states that a Code of Conduct for Import Licensing Procedures now being negotiated "deals with the administration of import licensing procedures, rather than with the existence or extent of quantitative import restrictions. Its purpose is to simplify and harmonize to the greatest extent possible the procedures which importers must follow in obtaining an import license, so that these procedures do not themselves constitute an unnecessary obstacle to international trade."

The Code now being negotiated includes:

(1) A definition of "import licensing" covering administrative procedures (e.g., procedures referred to as "licensing" as well as other similar measures) requiring the submission of an application or other documentation (other than that required for customs purposes) to a relevant administrative body as a condition that must be fulfilled before importation into the customs territory of the importing country.

(2) A requirement that the period for processing a nonautomatic import license, including licenses required for the administration of quotas and other import restrictions, should be as short as possible and that the duration of a license not be so short as to preclude importation from taking place. In granting licenses, governments may take into account whether previously issued licenses have been utilized.

(3) A requirement that if licenses are required to administer quotas which are not specifically allocated to supplying countries, license holders must be free to choose the source of imports.

(4) A requirement that, if an importing country requires import licenses to administer an export restraint arrangement between an exporting and an importing country, then such licenses shall be granted freely, *i.e.*, automatically, within the restraint levels in question.

Issues.—The Subcommittee is interested in receiving testimony on the following issues:

(1) *Scope of code.*—What existing domestic statutes or administrative procedures would fall within the scope of this Code?

(2) *Implementation method.*—Should the provisions of this code be implemented by Executive Order or through legislation?

(3) *International dispute settlement.*—What procedures should be established to permit private parties to raise questions about foreign licensing practices which they wish to be pursued in the international dispute settlement forum? How should decisions on the matters to be pursued internationally be made?

Requests to testify.—Chairman Ribicoff stated that witnesses desiring to testify during these hearings must make their requests to testify to Michael Stern, Staff Director, Committee on Finance, Room 2227 Dirksen Senate Office Building, Washingon, D.C. 20510, not later than Thursday, February 15. Witnesses will be nctified as soon as possible after this date as to whether and when they are scheduled to appear. If for some reason the witness is unable to appear at the time scheduled, he may file a written statement for the record in lieu of the personal appearance.

Consolidated testimony.—Chairman Ribicoff also stated that the Subcommittee strongly urges all witnesses who have a common position or the same general interest to *consolidate their testimony* and designate a single spokesman to present their common viewpoint orally to the Subcommittee. This procedure will enable the Subcommittee to receive a wider expression of views than it might otherwise obtain. Chairman Ribicoff urged very strongly that all witnesses exert a maximum effort to consolidate and coordinate their statements.

Legislative Reorganization Act.—In this respect, he observed that the Legislative Reorganization Act of 1946 requires all witnesses appearing before the Committees of Congress to "file in advance written statements of their proposed testimony, and to limit their oral presentations to brief summaries of their argument." Chairman Ribicoff stated that in light of this statute, the number of witnesses who desire to appear before the Subcommittee and the limited time available for the hearings, all witnesses who are scheduled to testify must comply with the following rules:

(1) All witnesses must include with their written statements a summary of the principal points included in the statement.

(2) The written statements must be typed on letter-size paper (not legal size) and at least 100 copies must be delivered to Room 2227 Dirksen Senate Office Building not later than 5:00 P.M., Tuesday, February 20, 1979.

(3) A limited amount of time will be allowed for the oral summary. Witnesses who are scheduled to testify will be informed as to the time limitations.

(4) Witnesses are not to read their written statements to the Subcommittee, but are to confine their oral presentations to a summary of the points included in the statement.

Witnesses who fail to comply with these rules will forfeit their privilege to testify.

Written statements.—Witnesses who are not scheduled to make an oral presentation, and others who desire to present their views to the Subcommittee, are urged to prepare a written statement for submission and inclusion in the printed record of the hearings. These written statements should be submitted to Michael Stern, Staff Director, Senate Committee on Finance, Room 2227 Dirksen Senate Office Building, not later than Wednesday, March 5, 1979.

Senator RIBICOFF. The committee will be in order. This is the first of two scheduled hearings on implementation of the trade agreements being negotiated in the multilateral trade negotiations. This hearing does show that not only can we operate in the sunshine, but also in ice and snow, and I would not have given you a melted icicle about a half an hour ago that I would be here, but I am, and so are you.

On January 4, 1979, the President notified Congress of his intention to enter into trade agreements. Under section 102 of the Trade Act of 1974, the submission of this notice means a President may enter into trade agreements at any time after April 4, 1979. As negotiations come to an end, consultations with Congress regarding implementing legislation must now begin. There was no requirement that we have this hearing under the law, but my feeling is that the trade agreements are of such major importance that a full airing of issues is required. Even though we do not have the MTN report, we have a general understanding of what the outline of those agreements may encompass, and we would like to hear as many groups as possible as to their thinking about the MTN, and especially how the MTN package can be most effectively implemented in our domestic framework of laws and regulation.

So our first scheduled witness is Mr. Roger G. Lewis of the National Farmers Union. Welcome, Mr. Lewis. May we have your testimony?

Senator HEINZ. Mr. Chairman?

Senator RIBICOFF. Excuse me. I want to thank Senator Heinz for having agreed to open up these hearings and chair them when it looked like I would not make it. I did not even hear you come in.

Senator HEINZ. Mr. Chairman, just the way the Post Office used to be famous for getting through regardless of rain, sleet, or snow, you deserve to be equally famous.

Mr. Chairman, I would just like to join you in your opening comments at these hearings. The MTN negotiations that are concluding have great significance to our country. They are of such significance because the quality of those agreements and the quality of the implementing legislation that we will be considering will really determine whether or not the American enterprise system is going to be able to have rules for game that will allow us to stay in the game for the long term.

I speak for myself. The administration has succeeded in negotiating an agreement that provides for sufficient countervailing authority so that the economy of this country is not subject to the vagaries, intricacies, and interference of government subsidies or other foreign government activities, that disrupt the free market mechanism which should operate in trade.

However, Mr. Chairman, I fear not just for the agreement the administration sends down to us, not just for the implementing legislation, but for the continued survival of the American enterprise system, which is based on buyers and sellers in a free market, determining the best allocation of scarce resources. I would fear greatly that our prospects for survival would be severely diminished and that we would find that after a period of time of being subject to what is conventionally called unfair foreign competition, we would find far too many in the American business community coming before the Congress, as indeed, some have already, for what is essentially welfare.

Now, nobody wants any more welfare than already exists. If there is one thing that you read in the public opinion polls, it is that the American people are sick and tired of a welfare state mentality. They are sick and tired of it, because they see that it has given rise to more government, not better government; more expensive government, but not more cost-effective government.

If there is a message that I think people first heard with the passage of Proposition 13, heard perhaps more insistently on Capitol Hill last November when there were some changes made, it is that a welfare state mentality is not what the people want this country to be about.

And particularly, if you recollect the furor over the Lockheed loans and other attempts by the business community to come down to Capitol Hill, it should be clear that corporate welfare is worse than any other kind.

Yet, we should not kid ourselves. If what we get in these codes does not set down rules for the game which we can play without interference on a free trade basis, then corporate American will come to this Congress for welfare, and that will be the end of our economic system.

That is not something that this Senator wishes to see.

Mr. Chairman, I appreciate your giving me this opportunity to make these brief remarks, as I do think that what we are engaged in here is of far more significance than perhaps might be apparent.

We will be listening quite properly to a number of people with specialized, or even special, interests. I think that we should. But the public interest and the interest of this country is really at stake in these hearings, not just the particular special interests of any one industry or group.

I thank you, Mr. Chairman.

Senator RIBICOFF. Thank you, Senator Heinz.

Mr. Lewis?

STATEMENT OF ROBERT G. LEWIS, CHIEF ECONOMIST AND NATIONAL SECRETARY, NATIONAL FARMERS UNION

Mr. LEWIS. Thank you, Mr. Chairman.

I do congratulate you, Mr. Chairman, and Senator Heinz for your hardiness in getting to this hearing, as much as I appreciate my good luck at being here on time.

The Farmers Union, throughout its history, has been a champion of the Reciprocal Trade Acts, and the multilateral negotiating rounds that have followed them, and we feel that the trade advancement policies that have been pursued over the past 40 years have made great contributions to the era of rising prosperity that our allies and economic partners have enjoyed over the years since World War II.

The present trade legislation does, however, give us some misgivings. There are three primary causes for our concern.

First, we do not know just exactly what the agreements will provide. They are not yet completed. Secret negotiations are still underway and, in many cases, we do not know just what the final provisions and outcomes will be of matters still under consideration.

We do not want to be rushed to judgment, Mr. Chairman, and we think that the Congress likewise should forebear making hasty conclusions about the merits of the negotiations until the results are in.

Another problem is that we are concerned that perhaps some segments of American agriculture may be asked to pay a price that exceeds the benefits they will get, for those benefits that will be accorded to other sectors of our economy.

Specifically, the claims are being made that about $3 billion in agricultural trade will be affected by provisions of the agreement. For one thing, $3 billion is only a small segment of the total $27 billion a year agricultural trade exports of this country. Even more important than that, the term "affected" does not mean that that quantity of additional exports will be created by the changes in the trade rules that are being negotiated. It means only that the procedures by which trade is conducted would be altered in some way, possibly without any perceptible change in the volume of actual agricultural exports from the American farmers, and possibly with no perceptible change in the price that will be paid at American farmers.

For example, one of our most valuable concessions relates to our exports of soybeans to Japan. Japan has charged no duty on U.S. soybeans imported into that country for the past 4 years. We understand that the American negotiators have secured an agreement tentatively that the Japanese will continue that no-duty importation admittance of soybeans into their market.

This one concession accounts for about one-fourth of the total $3 billion of affected trade that is referred to, yet it merely continues the status quo and we will have no perceptible change in the volume of our exports of soybeans to Japan, nor in the price that American farmers will be paid for them.

Another big set of concessions, with "affected" trade valued at $400 million, is fruits and vegetables. Here, the big winner is citrus. There are only about 30,000 farmers in the United States who are concerned with producing citrus fruits.

"Affected" trade in livestock and products is valued at about $900 million, another very large component. The only potential actual increase in exports so far identified, of which I have been able to learn, is a projected increase of 34,000 tons per year in sales of high quality beef in Japan and Western Europe. That, of course, is a projected increase after a period of years as a result of the trade concessions that have been won.

That quantity of beef amounts to only about one-third of the volume of beef that will enter the United States as a result of the increase in the U.S. beef import quotas ordered by President Carter last year.

These examples, in our judgment, measure up in short terms of actual change in trade flows in comparison to the change in trade flows that would result from our concessions on dairy commodities. Dairy farming appears to be the primary sector that is paying the price for this agreement.

When the trade negotiations are completed later this year, the existing waiver of the American countervailing duty law will expire. That is, the waiver did expire December 31, but it is expected that Congress will renew the waiver to last up until mid-October when the negotiations are expected to be completed.

When that waiver expires, then the countervailing duty law must be enforced upon articles imported into this country as a result of a bounty or a subsidy paid by the exporting country. Almost all imports into the United States of cheese, except those from New Zealand and Australia, and a few high-quality specialty cheeses, cost more in the country where they are produced and can be exported to the United States only by the aid of a subsidy from the exporting country.

This subsidy is running about 40 to 60 cents a pound. The U.S. Government has reported that imports of cheese from New Zealand and Australia, and the types of specialty cheese that might be exported without a subsidy, would total about 53-million pounds per year. That or a little bit more is all the cheese that we could expect our dairy farmers to be required to face in competition in our domestic markets if the countervailing duty law were enforced.

But the agreements being negotiated provide for making the countervailing duty practically a dead letter, and enforcement of the law would be suspended unless, and until, "injury" to American farmers could be proved to the satisfaction of our Government.

Moreover, the import quota for cheese would be set at a new higher level, higher by about 500 percent, than the volume of cheese that could be expected to enter if the countervailing duty law were being enforced. So a 500-percent increase in cheese imports is the price that it proposed that our dairy farmers should pay for this agreement.

This price would cost American dairy farmers annual imports of about 190 million pounds of competing cheese each year, above what they could expect if the countervailing duty law were enforced. The new quota for cheese imports would be about 32 million pounds larger than the present quota, plus the nonquota imports that are now entering as a result of the waiver of the countervailing duty law.

Although the actual effect on increasing exports has not been estimated, and probably never can be measured accurately, we acknowledge that the concessions being negotiated for soybeans, citrus fruits, high-quality beef, tobacco and certain other agricultural commodities do have significant value to the producers of those commodities and to farmers generally.

Approval of the trade agreements will also have great value to the general public, because a turndown might be viewed as a shattering blow to the psychology of the overall world economy.

But we think that it must be remembered that dairy farmers do not have available to them the adjustment assistance that workers in other industries do have, and that some concession needs to be made to compensate dairy farmers for the price they will have to pay if the agreements are approved.

We suggest that an increase in the minimum support price for dairy products to 90 percent of parity, would be a fair and reasonable compensation to our dairy industry for forcing them to accept enormous volumes of subsidized import competition.

Another disappointment is the failure of the agreements to do anything about the grain market. This is explained in my prepared statement.

Thank you, Mr. Chairman. My time has expired.

Senator RIBICOFF. Mr. Lewis, we do appreciate your testimony and we do understand the problems that you have mentioned in your testimony, and we have those same problems as members of this committee, because these agreements have not been signed, have not been actually submitted, but we did want to give you and others an opportunity to be heard generally.

Once these agreements are submitted, you and your organization would have the opportunity to perform, and we would appreciate your submitting to the committee then, an analysis of the impact that these agreements would have, specifically on various phases of agriculture.

So when the agreements are here, you will be in a position to express your concerns fully.

Mr. LEWIS. Yes, sir. We will do that.

Senator RIBICOFF. We would hope that you, and other witnesses, would feel free to give the committee the benefit of specifics that you will then have when these agreements are actually signed.

Mr. LEWIS. Yes, sir, Mr. Chairman.

Senator RIBICOFF. Senator Heinz?

Senator HEINZ. Yes, Mr. Chairman.

I have one question, Mr. Lewis. In your testimony, you mentioned cheese quotas. Do you believe those should be submitted as a part of the MTN package, or should they be revised in accordance with the normal section 22 procedures?

Mr. LEWIS. Section 22 does not adequately address itself to the problem of subsidized imports. It applies only to imports in general and I do not know of any other commodity in our market where there is such a clear and flagrant case of subsidized competition, as compared to what our dairy farmers encounter. The countervailing duty law requires that a countervailing duty equal to the amount of the subsidy be applied and, if that were done, that would sharply reduce the volume of cheese that could enter our market.

We think that the countervailing duty law does need to be enforced. The courts have held that it is the law of the land, and the law should be executed, although it never has been done in the case of dairy products.

If the agreements eliminate the effectiveness of the countervailing duty law, I think it will create an extraordinary and exceptional situation in that we will have entered into an agreement to subject our dairy farmers to subsidized competition, which would be contrary to our law and to our practice, the law stood before the agreements were negotiated.

Senator HEINZ. If I can interpolate your answer therefore, would I be correct in understanding that you believe that the chief quotas that you refer to should be a part of the MTN?

Mr. LEWIS. I think that the cheese quotas obviously will have to be a part of the MTN, but what is done about the countervailing duty law also must be taken into account, specifically in respect to compensating dairy farmers for the loss of that source of protection.

I do not know of any interest in the United States that faces a comparable situation where the Government has negotiated away the protection of existing law against subsidized imports. And if that is going to be accepted—and I understand that the agreements must be voted up or down in their entirity without amendment—then I think that something needs to be done to compensate dairy farmers for the reduction in their income that will result from that increase in subsidized import competition.

That should be done through the price-support program. It could be done very well by increasing the minimum level of price supports for our domestic dairy farmers.

Mr. HEINZ. I understand. Thank you, Mr. Lewis.

Senator RIBICOFF. Thank you very much.

[The prepared statement of Mr. Lewis follows:]

STATEMENT OF ROBERT G. LEWIS, CHIEF ECONOMIST AND NATIONAL SECRETARY OF THE NATIONAL FARMERS UNION

Presenting a statement of our views on the trade agreements now being negotiated poses a troubling problem for me, and for the Farmers Union.

The Farmers Union throughout its history has championed the Reciprocal Trade Acts and the other international economic policies and programs which, interacting together, lifted the world out of the collapse of the 1930's, sustained our country and our allies through World War II, and then propelled victors and vanquished alike into the longest and richest era of rising and spreading economic prosperity the world has ever known. Trade agreements were not the prime movers in this achievement, but they took some of the sand out of the economic and commercial gears and facilitated the great economic growth of the era.

I think the most important thing about these past trade agreements was that they constituted a commitment of spirit and will on the part of the "market economy" countries, and demonstrated their confidence in the evolving system of global cooperation and advancing welfare that they shared.

Today there are three aspects of the current trade negotiations that are troubling.

PROVISIONS NOT YET PUBLICIZED

First, we do not yet know what the agreements will provide.

Secret negotiations are still underway, and from all that we can learn, many crucial decisions are still up in the air. The content of the agreements has not yet been made public. We think that the Administration is premature in rushing concerned parties, through its advisory committee system and otherwise, into endorsing agreements that are not yet completed so as to further its campaign for approval by Congress.

We will not be rushed to judgment, and we urge that the Congress do likewise. The Trade Act permits ample time for scrutiny by the public and deliberation by the Congress. If necessary, Congress can act to extend the time. The trade agreements will make far-reaching changes in existing laws and procedures that are of fundamental importance to many farmers and other citizens, and there should be full disclosure and full debate before decisions are made.

Secondly, some of what we do know about the pending agreements is disquieting, to say the least.

Despite bold claims down through the past several years that this negotiating round would be "agriculture's turn", much less appears to have been achieved in comparison to what is being paid to expand the volume and value of farm product exports from the United States.

"BENEFITS" HAVE THEIR PRICE

Let's examine some of the claims, and measure them against the price:

Spokesmen for the Administration make much of the idea that the agreements will "affect" about $3 billion a year in agricultural trade.

For one thing, that is a small fraction of the roughly $27 billion-a-year volume of present U.S. agricultural exports.

Even more important, "affected" does not mean at all that *additional* exports would be created. It means only that the procedures by which trade is conducted would be altered in some way, possibly without any perceptible effect upon the volume being traded or the price that will be paid to the American farmer who produced the commodity.

JAPAN WON'T TAX SOYBEANS

For example, one of the most valuable "concessions" being negotiated relates to our exports of soybeans to Japan. Japan has charged no duty on U.S. soybeans imported into that country for the past four years. The American negotiators appear to have won a "concession" from the Japanese that the no-duty admittance of soybeans will be continued permanently. This one "concession" counts for $770 million (one-fourth) in the 3,000 million total, because it "affects" that yearly volume of U.S. soybeans sold to Japan.

Another big set of "concessions", with "affected" trade valued at $400 million, is fruits and vegetables. Citrus—produced by only 30,000 farmers in four states—is the biggest "winner" among these commodities.

"Affected" trade in livestock and products is valued at $900 million, but the only actual potential increase in exports so far identified is a projected 34,000 ton per year increase in sales of high quality beef in Japan and Europe. That is barely one-third as much as the increase in beef imports into the United States ordered by President Carter last year.

MILK PRODUCERS PAY "PRICE"

These examples measure up short in terms of actual change in trade flow in comparison to the outstanding "price" that it is contemplated would be paid for the agreements—by dairy farmers.

When the trade negotiations are completed later this year, the waiver of the American countervailing duty law is scheduled to expire. The federal courts held shortly before the waiver was adopted as an amendment to the Trade Act of 1974 that this law means what it says and must be enforced. Enforcement of that law will require the United States to impose a "countervailing duty" upon any imported articles if the country of export has paid a subsidy to get it exported.

Almost all imports of cheese into the United States except those from New Zealand and Australia are subsidized. Farmers in other exporting countries get more for their milk and cheese made there costs more than in the United States. It is impossible for exporters in those countries to sell much cheese in America, other than small quantities of high-quality "specialty" cheeses, unless the country government pays subsidies of 40 to 60 cents per pound. Enforcement of the countervailing duty law would stop all such imports.

The United States government has reported that imports of cheese from New Zealand and Australia and of the types of "specialty" cheese that could be imported without subsidies totals about 53 million pounds per year. That or a little more is all the imported cheese American dairy farmers would need to face if the countervailing duty law were enforced.

But the agreements being negotiated provide for making the countervailing duty law practically a dead letter. Enforcement of the law would be suspended unless and until "proof of injury" to American farmers could be made to the government's satisfaction.

Moreover, the import quota for cheese would be set at a new higher level about 500 percent greater than the probable level of imports of cheese if the countervailing duty law were in effect.

The net "price" this would cost to American dairy farmers would be annual imports of around 190 million pounds of competing cheese each year above what they could expect if the agreements were rejected and the waiver of the countervailing duty law expired. The new "quota" for cheese imports would be 32 million pounds larger than the present quota plus non-quota imports while the waiver of countervailing duties is in effect.

IS AGREEMENT WORTH COST?

Although the actual effect on increasing exports has not yet been estimated and probably can never be measured accurately, the "concessions" being negotiated for soybeans, citrus fruits, high quality beef, tobacco, and other agricultural commodities have significant value to their producers and to farmers generally. Approval of the trade agreements has even greater value to the general public, for a turn-down would be a shattering blow to the world's economic and political psychology. The question is whether the benefits outweigh the costs, and whether dairy farmers are being tapped to pay more than their share.

Almost any importation of dairy products directly displaces an equivalent volume of milk and its products into the price support purchase program, and is thus directly related to the level of producer prices that the government will be willing to maintain. We contend that any subsidized importation of cheese would constitute an "injury," and should thus be barred.

But we have no confidence that an "injury test" would be administered faithfully and rigorously. We consider that any such concession in the trade agreements would be all but tantamount to negation of the countervailing duty statute, and that dairy farmers should be compensated accordingly.

The direct and practical means for compensating dairy farmers for the cost to them of admitting subsidized dairy products into our market should be to guarantee that domestic milk prices will not be permitted to be depressed unfairly. This can be done under the price support program, by raising the minimum level of support from 80 percent of parity to 90 percent.

If the Agreements are approved, enforcement of the countervailing duty law, the function of which relates directly to the purposes and operations of the dairy price support program, should be administered in the U.S. Department of Agriculture by the same agency charged with responsibility for administering the price support program.

FARMERS GET NO "ADJUSTMENT" AID

In considering the compensatory benefits to be provided for dairy farmers if the agreements now under consideration should be approved, account should be taken of the fact that farmers whose incomes are reduced by import competition are not eligible for any of the trade adjustment allowances, payments, training and relocation aid, low interest loans, and the like that are offered to businessmen and workers who are injured by import competition.

Firms damaged by import competition may receive loans at low interest rates of up to $3 million. Workers who lose their jobs can receive allowances of up to 70 percent of their normal pay for as long as a year and a half, plus allowances and services for training, seeking a new job, and relocating to a new community.

GRAIN "GIVE-AWAY" CONTINUES

Another disquieting aspect of the agreements as we understand them is that there appears to be no provisions for ending the sale in export of American grain at artificially-low prices below the farmer's cost of production.

We are selling our wheat for the cheapest price in the world.

More than three-fourths of the wheat that is produced and consumed in all the world brings higher prices to its producers than the "world market" price that we get paid for our exports. Some get prices four or five times as high.

Consumers in all the countries that buy American wheat pay these higher prices for all that their own farmers produce. Then if they need more, their governments buy some from us and mark-up the price to the higher level their own farmers get when they re-sell it to their own consumers.

This senseless policy is forced upon all of the grain exporting countries by the United States by virtue of our predominant size in the grain export market. More than half of all the grain that moves into world trade comes from the United States. Canada, next biggest, ships one-fourth as much. Australia and Argentina combined ship only one-fourth as much.

The big winners, albeit inadvertent, are our leading economic rivals in Europe and Japan, and the Soviet bloc countries which buy our grain on the cheapest real terms in history while we spend hundreds of billions on military defenses against them. Japan makes a profit for its national treasury of $5 per bushel on all the American wheat it buys when it re-sells to its own flour millers. The Europeans skim off nearly $4 per bushel.

"WORLD MARKET" PRICE ARTIFICIAL

Even the one-fifth of the world's wheat crop that is produced in the United States, Canada, and Australia cannot be produced at the "world market" price, and the governments take special steps to pay their farmers something extra, either out of their national Treasuries, or by charging their domestic consumers higher prices.

Just a few weeks ago, Canada raised the minimum price of wheat for domestic consumption to \$3.40 a bushel. Australia charges flour mills \$3.67 per bushel for wheat to be consumed at home—\$1.30 a bushel more than the advance payment that is made to Australian farmers for wheat to be exported.

In the United States, it is commonly believed that wheat producers receive deficiency payments to raise their total receipts from wheat to \$3.40 per bushel. The truth is that farmers are required to keep 20 percent of their wheat land out of work in order to get the payments, so that the payments are really "unemployment compensation" for their set-aside acreage. Even so, the system provides somewhat more in total take-home pay than the "world market" would yield by itself.

That leaves Argentina—the only place on earth where farmers probably live and die on nothing more than the "world market" price for their wheat.

That is just a shade over one percent of the world's wheat! And if it can be said that the Argentina farmers and their poverty-blighted rural workers receive their full "cost" out of what they get, they are the only producers on earth whose cost of production is covered at the "world market" price at which the United States government unwisely forces our own farmers and those in other exporting countries to sell their grain.

Apparently there is no significant change to be made in the anamolous "world market" for grain. There will be no significant dent made in the barriers that prevent American grain from competing in every country. Nor will there be any agreement for raising and maintaining grain prices in world trade to fair levels adequately compensating farmers for their production costs.

This is the biggest disappointment, and the biggest failure, of the trade negotiations.

Senator RIBICOFF. The next witness is Mr. Stuart Watson.

I notice there are a number of witnesses representing the distilling industry. Are there any other witnesses here that are on the same side of the position being taken by Mr. Watson?

Mr. WATSON. Yes; there are.

Senator RIBICOFF. My only thought is that we could save time if you could come up to the witness table at the same time and testify together; you can each testify yourself and then you can answer the questions. This way, we save some time of the committee.

Your name, sir?

Mr. BERKOWITZ. Marshall Berkowitz.

Senator RIBICOFF. You are from the American Distilling Co.

STATEMENT OF STUART D. WATSON, CHAIRMAN OF THE BOARD, HEUBELIN, INC., FARMINGTON, CONN., ACCOMPANIED BY FRANK DAILY, PRESIDENT, KENTUCKY DISTILLERS ASSOCIATION

Mr. WATSON. Mr. Chairman, Senator Heinz, I am Stuart Watson, chairman of Heubelin, Inc., of Farmington, Conn. Seated beside me is Frank Daily, president of the Kentucky Distillers Association.

We are members of the Distilled Spirits Council of the United States and represent the majority opinion of the members of that organization and of the U.S. distilling industry in opposing the proposed change in the historic system of taxing distilled spirits.

Without enumerating the 25 or more domestic distillers which take this same position, I would point out that we provide employment and contribute to economic development in States from coast to coast.

Senator RIBICOFF. How many members are there in the Distilled Spirits Institute?

Mr. WATSON. Total membership—I will have to get the exact figure for you, Senator.

Senator RIBICOFF. I was just wondering. You say 25. You represent what segment?

Mr. WATSON. Probably about 85 percent.

Senator RIBICOFF. About 85 percent?

Mr. WATSON. That is my figure, approximately. We can verify that for you.

Senator RIBICOFF. You can supply that for the record.

Mr. WATSON. Yes.

There are 31 voting members.

An opposite view on this proposal is held by the Seagram Distillers Co. and Hiram Walker, Inc., both Canadian companies, and by the Scotch Whisky Association.

I am sorry to say that in the international trade negotiations just concluded, not one single foreign trade barrier to our U.S. industry was broken down and not one single competitive advantage was gained for our industry abroad—yet the proposed change in figuring excise taxes will subject us to severe new foreign competition on our home ground.

Senator RIBICOFF. I am just curious, and Senator Heinz, you may interrupt, too, to make any points as we go along. How much distilled spirits do we export from the United States?

Mr. WATSON. Our total exports are very small. I think there is a negative of $700 million a year.

Senator RIBICOFF. We export?

Mr. BERKOWITZ. Our negative balance of trade is $700 million.

Mr. WATSON. A majority are imported.

Senator RIBICOFF. If I am in London or Paris and ask for Smirnoff vodka, that is not vodka exported from the United States, but what you produce in Europe?

Mr. WATSON. Produce in Europe, produce in most countries of the world; yes, sir.

Senator RIBICOFF. So most of the liquor that is manufactured or bottled in the United States is for American consumption?

Mr. WATSON. Yes, sir.

Senator RIBICOFF. The imports into this country of distilled spirits are very high, and exports are very low?

Mr. WATSON. Yes, sir. The imports have increased over 300 percent over the last 20 years. Of course, the excise taxes on imports have been reduced significantly over the years from $5 to 50 cents a gallon——

Senator RIBICOFF. I gather, though, that many of you people who are distributors or bottlers in the United States are also large importers, and you distribute under your own labels. You, yourselves, import a large amount of liquor, do you not?

Mr. WATSON. We are an importer as well as a producer; yes.

Senator RIBICOFF. I would like you to develop for me, which I do not understand, the relative impact.

Mr. WATSON. It varies greatly by country.

Senator RIBICOFF. What you are driving at is that you bring the Scotch in in bulk?

Mr. WATSON. Yes, sir.

Senator RIBICOFF. Then you bottle it under whatever the trade name, which is an international trade name?

Mr. WATSON. It might be a name that we own.

Senator RIBICOFF. A name that you own.

Mr. WATSON. Yes, sir.

Senator RIBICOFF. Then you pay a tax on this bulk liquor, on the barrels or drums or however you bring it in?

Mr. WATSON. Yes, sir, $10.50 a gallon at 100 proof.

Senator RIBICOFF. And something is taking place in the tax setup that would place you at a disadvantage?

Mr. Watson. Yes, sir.

Senator RIBICOFF. Would you explain as best you can how this takes place?

Mr. WATSON. We have had the proof gallon and the wine gallon issued I guess for about 110 years, or however long this taxing system has been in place in our country. It is not a discriminatory idea, in our point of view, because anyone can bring a product in this country on that basis.

Some elect to bottle their product abroad and import it as a bottled product. If the product is less than 100 proof, they would pay the 100 proof tax on it, so the difference is what is involved here in the two methods of taxing.

Senator RIBICOFF. In other words, if they bring in vodka under 80 proof, they are paying a tax based on 100 proof?

Mr. WATSON. Yes.

Senator RIBICOFF. It is being changed in the MTN, they would only pay a tax on 80 proof instead of 100 proof?

Mr. WATSON. Yes.

They can elect to bring the product in, in bulk, and pay the same tax that we do. It is their election to bottle in England or wherever else in the world, and import it into the United States that makes us different.

Senator RIBICOFF. I am curious. Why do they do that, because it is certainly easier for them to ship in bulk than pay the expensive cartage and freight?

Mr. WATSON. It seems to be primarily a marketing opportunity. If you look at it, I think, in total, because in the United States the word "imported" has such positive meaning and a premium price can be secured if the product, as they see it, is bottled and imported as a bottled product.

Senator RIBICOFF. In other words, if liquor comes over in a bottle, you can put on the lable "imported." Is that correct?

Mr. WATSON. Yes.

Senator RIBICOFF. If it is bottled by you, you cannot say imported?

Mr. WATSON. You can say, "Imported, not imported in the bottle."

Senator RIBICOFF. How many people actually look at that label to see that?

Mr. WATSON. It is a difference established by present strategy for many years. It is a little bit like the analogy that historically we had two kinds of beer in this country, local beer produced in Connecticut and we have what we call a shipping beer produced, maybe in St. Louis or Milwaukee. And it was a story that the shipping beer sold as a premium and was perceived as a premium product over the local beer. Over a period of years, most of the local breweries have gone out of business and today the predominant is the shipping beer, or what is perceived by the consumer as being a premium beer.

It is that analogy, I think. It is the same analogy that we are speaking to here. That is, in effect, the way that the Scotch situation seems to have developed through the years. Although bottled-in-U.S. Scotch is a product that is in general distribution, the larger percent and the growing percent of the Scotch sold in the United States is bottled in the bottle in Scotland and shipped to the United States.

Senator RIBICOFF. What would the difference be to you? You bring in X brand of Scotch from Scotland in bulk and you bottle it in one of your American plants.

Mr. WATSON. I think the rule of thumb seems to be about a bottle, as a rule of thumb, as a minimum.

Senator RIBICOFF. In other words, this method would cost an extra $1, would lower the price?

Mr. WATSON. Generally speaking. Let's take Canadian, which is the most common category. I think the spread between the bottled-in-Canada Canadian whisky shipped to the United States and a bottle in the United States is rule-of-thumb to the consumer about $1 or more than $1.

Senator RIBICOFF. It is your feeling, from the consumer's standpoint, forgetting your industry, that the consumer would be better off if that were shipped in bulk. It is the same whisky.

Mr. WATSON. In my opinion.

Senator RIBICOFF. The same taste?

Mr. WATSON. The same taste.

Senator RIBICOFF. It comes over in barrels. You bottle it, instead of bottling it in Scotland and sending it over here?

Mr. WATSON. We have four different plants in the United States, one in Connecticut, one in Michigan, one in Kentucky, and one in California where we bottle Canadian.

Senator RIBICOFF. If I went into a package store and brought your X brand of Scotch bottled in the United States, would I pay $1 less for it than if I bought that same brand of X Scotch that was bottled in Scotland and sent over here?

Mr. WATSON. Theoretically, you would.

Senator RIBICOFF. Not theoretically, actually?

Mr. WATSON. The issue is, are the products the same? These are blended products. The tax rate here would be higher, you see. You would pay really on the basis of the tax. About the taste of the product, this is a matter of taste. But the tax difference would result in a dollar a bottle, approximately.

Senator RIBICOFF. More?

Mr. WATSON. More.

Senator RIBICOFF. You may proceed.

Mr. WATSON. Did I help clarify it some?

Senator RIBCOFF. I am trying to figure what difference it makes to the consumer.

Mr. WATSON. We will document all that to you.

Senator RIBICOFF. I am concerned what impact this will have on the consumer.

Mr. WATSON. Yes, sir. We will document all that for you in the fact sheets, as well as the brief statement that I am making here.

[The following was subsequently supplied for the record:]

III. THE WINE GALLON METHOD OF TAXATION IS NOT DISCRIMINATORY

IF IT WERE ELIMINATED AMERICAN CONSUMER PRICES WOULD NOT BE REDUCED

The wine gallon/proof gallon method of taxing distilled spirits does not discriminate against imports. A producer of Scotch whiskey, for example, has a choice:

1. He may bottle in Scotland and ship finished products to the U.S. at under 100 proof and pay tax on the higher wine-gallon basis, or
2. He may export the same product to the U.S. in bulk at over 100 proof, reduce its proof and bottle it here. He then is taxed on the proof-gallon basis as is any domestic producer.

The only reason for choosing to bottle in Scotland or in other foreign countries is to give the product a premium image—so that the public will think the product is better and be willing to pay more for it—when in fact it is virtually identical to the same product bottled here. For that reason companies aggressively advertise the fact that products are bottled in foreign countries.

Most major foreign bottlers have bottling facilities in the United States—facilities with idle capacity; they could move their foreign bottling operations here readily if they so desired.

Bottling abroad is purely a marketing decision and has nothing to do with taxes. Companies who bottle abroad are willing to pay taxes at the higher, wine-gallon rate, pay far higher freight charges for moving bottled goods than they would for moving bulk (because they are shipping glass and extra water as well as Scotch) and pay more to bottle abroad than here (bottling here is more efficient). WHY? Because they can mark up the price to the American consumer so much that they still can make more money than if they bottled here.

Elimination of the wine gallon method of taxation would not lower prices for the American consumer. The "premium image" of foreign bottled products allows them to command the high prices they do. They still will command these prices even if taxes on them are reduced. Thus the estimated $110,000,000 loss to the U.S. Treasury will not go to savings for the American consumer, but will go directly into the profits of importers and foreign suppliers.

That this is so is demonstrated by the following:

1. Since 1933 the U.S. duty on Scotch has been reduced from $5.00 per gallon to $0.51 per gallon, but the price of Scotch never has been reduced to reflect these savings and in fact has been raised. The same is true of Canadian. (Duty of $5.00 in 1933; $0.62 today.)
2. A major importer of goods produced at plants owned by it outside the U.S., while claiming in a written statement that a reduction in the tax on bottled imports would not hurt the bulk market or domestic producers, intimated that prices on bottled imports would not come down. The company pointed out that reducing the price of bottled imports might hurt their status position with affluent consumers and thus could be a depressing factor to sales.
3. The trend in recent years has been to increase the price of foreign bottled products to enhance and establish their "premium image." Since 1967 the price of foreign bottled Scotch has increased 20.9 percent while the price of U.S. bottled Scotch has increased only 10.7 percent.

During the same period the price of foreign bottled Canadian whisky increased 18.9 percent while U.S. bottled Canadian has increased only 9.2 percent.

The U.S. Government should not eliminate the wine gallon method of taxation. Doing so would reduce the incentive to ship bulk whisky to the U.S. and thus encourage the artificially high prices the American consumer pays for "premium image" products bottled abroad.

Mr. WATSON. As I have said, I am sorry that the international trade negotiations just concluded do not seem to indicate any quid pro quo for our industry. I believe this is exactly the opposite of the stated objective of the 1974 Trade Act, and I quote: "To foster the economic growth of and full employment in the United States."

The proposal presently being considered for excise tax modification is presented on pages 1947–48 of the Federal Register last January 8. It would eliminate the wine-gallon method of tax and duty assessments on imported distilled spirits and substitute the proof-gallon method. This would provide a windfall in excess of $110 million a year to a handful of foreign companies, increasing their competitive advantage in this country, reducing taxes paid to the U.S. Treasury, worsen the U.S. balance of trade and prove extremely harmful to domestic manufacturers of distilled spirits.

The present excise tax on distilled spirits is $10.50 per gallon, whether imported or domestic produced. All imports are taxed at this rate regardless of proof, up to 100 proof.

Our company and many other domestic distillers import spirits in bulk at 100 proof and lower the proof at our plants to the widely consumed 86 or 80 proof. Thus, we obtain a final product competitively priced when we bottle here.

Foreign companies are free to do the same by opening bottling plants in this country, and many of them have bottling plants here with unused capacity, but they choose to bottle abroad, so they pay the $10.50 excise tax on 86 or 80 proof imports. They want the premium image of a bottled, import product.

By charging the excise tax on a proof basis, the proposed change would take away the economic practicality of shipping into the United States in bulk. As a matter of fact, it could make it economically, and marketingwise, advantageous to bottle outside the United States and ship into this country, products that are now produced in the United States.

A change in the method of assessing the excise tax would cause economic losses for the United States in several other respects. It would imperil some companies engaged in the distilling or rectification of distilled spirits.

It would lead to job losses in these companies and their suppliers—particularly in the industries that furnish bottles, cartons and containers, caps and labels, for distilled spirits now imported in bulk and bottled here. It would worsen the trade balance of the United States, adding to the current annual trade deficit of $700 million in distilled spirits.

It would deprive the U.S. Treasury of revenue officially estimated at $110 million annually, and any attempt to regain this revenue through higher domestic taxes will be passed on to consumers, adding to the inflationary spiral.

Our own company has major production facilities in Connecticut, California, Kentucky, and Michigan. By importing Canadian and Scotch whiskies, rum, and tequila, in bulk, we have been able to provide employment here in the United States and to sell at lower prices to consumers. If this bulk importing were made impractical, we should have to consider curtailing our U.S. production and open bottling plants abroad, particularly in Canada and Mexico.

This would also mean manufacturing of spirits in other countries, and a tremendous loss to U.S. farmers who supply the grain for grain neutral spirits.

My company is the Nation's largest purchaser of grain neutral spirits. Of our four bottling plants, the first to feel the effect of this change in the excise tax would be our two coastal plants in Hartford, Conn., and Menlo Park, Calif.

Operations would wind down at these plants, causing a loss of more than 100 jobs. The annual loss could amount to more than 2 million case sales, valued at over $80 million.

This would bring additional unemployment and financial losses to our suppliers, affecting the trucking and printing industries, the suppliers of other purchased materials, and the glass container plants operating in Connecticut and California which would lose annual production of more than 24 million bottles.

Surely this was not the intent of the Congress in passing the 1974 Trade Act.

The present method of levying the U.S. excise tax, which has been in effect now 110 years, is hardly a trade barrier, nor is it a protectionist measure.

Consider this record:

Imports of distilled spirits into the United States have grown by 333 percent over the past 20 years. Meanwhile, U.S. import duties have been cut steadily and drastically since repeal from $5 per tax gallon of Scotch to 51 cents today; and from $5 per tax gallon of Canadian whisky to 62 cents.

Foreign manufacturers enjoy another great advantage. Their shipments, made directly to U.S. wholesalers, require no taxpayment until the product is shipped from the wholesaler to retailers.

In contrast, the U.S. manufacturer of distilled spirits must pay the excise tax within an average of 23 days after he ships to the wholesaler. Consequently, the foreign manufacturer enjoys a profitable advantage in the use of his money.

Furthermore, foreign distilled spirits are protected here by special appellations of country of origin. No U.S. distillery may originate a product called Canadian, Scotch, Irish, cognac, or tequila. U.S.-made bourbon is fighting for the same treatment abroad. We are also fighting high tariff barriers and a 24-percent discriminatory freight charge on shipments to Europe and the United Kingdom.

Senator RIBICOFF. In other words, you do not get that treatment when you sell your bourbon abroad?

Mr. LEWIS. I have the head of the Bourbon Institute from Kentucky.

Mr. DAILEY. Bourbon is a distinctive product of the United States and it has been recognized only in a few countries, whereas the United States has recognized Scotch, Canadian, tequila, and rum as being distinctive products of the country that produces them. Therefore, we cannot produce a product called "Scotch" and market it in this country.

The other countries—the United Kingdom, for example—do not recognize bourbon as a distinctive product as the United States, and they can produce a product that they call bourbon and market it as such.

Senator RIBICOFF. What I was trying to figure out, why did not our trade negotiators try to get a tradeoff for the American distilling industry if they were giving this break to foreign distillers?

Mr. DAILEY. Senator, as far as we know, the tradeoff has not come about because they have not gotten adequate concessions from the foreign countries and, insofar as we know in the industry, there are no concessions for the distilling industry. The concessions go to agricultural and other collateral matters.

Senator RIBICOFF. What would be the unique American-produced spirits in addition to bourbon that would have a market abroad?

Mr. DAILEY. Bourbon is our principal product and it is the one besides the vodka that are marketed abroad. One of our large companies represented here has several bottling plants around the world bottling bourbon and selling it abroad.

Senator RIBICOFF. That is from beginning to end produced abroad, not shipped from Kentucky or Tennessee?

Mr. DAILEY. Yes; it is shipped from Kentucky in bulk and bottled in the foreign country.

Senator RIBICOFF. What break do you get on the taxes you pay on the bourbon that you ship in bulk? Do you get the same break that the foreign distillers have in shipping to the United States?

Mr. DAILEY. No, sir. Their duties and taxes are much higher than those imposed by the United States, and there is a whole list of those, Senators. Each country, Senators, as you know is different, but in general they are substantially higher both in taxes and in duty.

Senator RIBICOFF. I think we have your point, Mr. Watson.

I wonder if Mr. Berkowitz would like to add something that Mr. Watson has not said?

STATEMENT OF MAURICE L. BERKOWITZ, PRESIDENT AND CHIEF EXECUTIVE OFFICER, AMERICAN DISTILLING CO.

Mr. BERKOWITZ. Yes, sir. I have to go through this quickly, but we export a great deal of bourbon to the Federal Republic of West Germany and we have to bottle there because it is almost impossible to be competitive in that market with bourbon whisky, or any whisky, without bottling it in the Federal Republic.

And therefore, we have the choice to bottle here or to bottle in the Federal Republic and we make that choice in order to be competitive, in order to get our exports across to West Germany.

Senator RIBICOFF. To be competitive, why do you have to bottle in Germany today, with the rate of exchange between the dollar and the Deutsch mark and the wage rates, is it not cheaper to bottle in the United States?

Mr. BERKOWITZ. Yes, sir. It is cheaper to bottle in the United States, but with a tax system somewhat akin to what we have, it is necessary for us to bottle there to be competitive. We can bottle here if we want to, but to be competitive, we have to do that.

Senator RIBICOFF. In other words, this concession could have been a traded-off on the tax of West Germany?

Mr. BERKOWITZ. Certainly, sir.

For instance, not allowing us to advertise grain products in the country, any kind of alcoholic beverage made from grain.

Senator RIBICOFF. They do not allow you to advertise?

Mr. BERKOWITZ. No, sir.

Senator RIBICOFF. This is a trade barrier.

Mr. BERKOWITZ. Another trade barrier, yes, sir. In Canada, they have a monopoly operation in each Province which, in effect, excludes us from entering the marketplace in an independent way as the farm exporters are allowed to do in many our States.

The agencies for the companies up there are unable to get our products into these controlled areas.

Senator, one problem that we do have, sir, on page 4 of my statement, I say, for example, bourbon must be aged in new, charred, white oak barrels that cost upwards of $60 apiece. They can be used once. Scotch and Canadian whiskies, however, can be aged in used cooperage, very often bourbon barrels purchased from us for about $6 apiece f.o.b., U.S.A. Their life expectancy is 30 years.

Then, too, every gallon of blended whisky that domestic distillers make, they pay a rectification tax of 30 cents. Scotch, Canadian and Irish are all blends, but are not required to pay that tax.

Undoubtedly, one of the biggest advantages at the point that is very important to us, foreign distillers enjoy over our domestic industry is the privilege of bringing their bottled abroad merchandise into this country "in bond" and thus defer tax payments for 150 days or more. The importer can keep it "in bond" for as long as he wants and then ship to a wholesaler who, in turn, can keep it "in bond" until he is ready to sell it. It is only when the goods are finally shipped to the retailer that taxes are paid.

So the importer does not have to finance the Federal Government's excise tax, but the American distiller must.

Senator RIBICOFF. Could you not keep yours in bond if the law was adjusted accordingly, if you kept it in a bonded warehouse before you shipped it to your distributors?

Mr. BERKOWITZ. We can only keep a period of grace about 21 to 23 days, sir. If we were given the privilege to ship in bond, it would alleviate a great deal of our burden of financing the Federal excise tax.

Senator RIBICOFF. Let me ask you gentlemen, did you ever discuss your problem with our trade negotiators?

Mr. LEWIS. Yes, sir.

Senator RIBICOFF. You have discussed it with them?

Mr. LEWIS. We have. There have been discussions by our association; yes.

Senator RIBICOFF. Were these discussions in depth?

Mr. WATSON. I cannot answer that.

Mr. DAILEY. I understand they were, Senator, but no concessions were made to us that would give us any hope that the trade-off would not occur.

Mr. BERKOWITZ. Senator, we wrote to Ambassador Strauss in depth and at great length on our problem and of the situation that would occur if this went through, and we got a note of acknowledgment.

Mr. WATSON. If I may add one thing, we never expected such a negotiation would take place. I believe if it becomes a fact, it requires a change in the revenue code. It is beyond my comprehension why our trade negotiators would consider giving a handful of importers, Canadian and U.K. companies, an opportunity for $110 million or more a year. That sort of a windfall, changing the tax system that has been in effect for 110 years and which has been legally supported in the courts on many different occasions.

Senator RIBICOFF. Is there anything comparable when it comes to beer? None of you are in the beer business.

Mr. WATSON. No, sir.

Senator RIBICOFF. What happens from a tax standpoint on imported beer coming into the United States?

Mr. WATSON. I cannot answer your question, but this general situation of discrimination between the American product and the European product generally exists throughout the world in wines.

In other words, the United States is generally more receptive to, and understanding of, the importing of products, alcoholic beverage products, in our country than the reciprocal nations are.

Senator RIBICOFF. That is curious. Your company has a large investment in domestic wines in California.

Mr. WATSON. Yes, sir.

Senator RIBICOFF. What impact does this have on domestic wines that are produced? Some of those California wines are very, very good. Many of them are better than imported wine.

What impact does this have on the domestic wine industry?

Mr. WATSON. It does not, other than using the illustration that the same kind of favorable reception is giving to imported products, wine products, into our country vis-a-vis the countries which we attempt to export into. That would include our neighboring country of Canada, or Japan or elsewhere.

Senator RIBICOFF. In other words, you have difficulty exporting your wines to France or England or Germany or Canada?

Mr. WATSON. Yes, sir.

Under a different tax basis, of course. We are dealing with different taxes on different products.

Senator RIBICOFF. I understand that.

Mr. BERKOWITZ. One point I do want to make, when you said what would happen to the consumer, the premium products that are now presently bottled in foreign countries, if they came in under the elimination of the wine gallon, proof gallon situation, from what we know, they would not change the premium price of the product to the consumer. That price would remain the same.

Therefore, the difference in taxation would go to either promote the products, imported products, coming into this United States by heavier advertising and marketing or be an extra profit to the foreign suppliers. They would not change prices. They would not before—as Mr. Watson has said in his statement and I have said in mine that the elimination of duties over the years has not lowered the price to the consumer.

Finally, people who have lowered the price to the consumer for imported products have been those distillers, bottlers, and rectifiers that have bottled that foreign product in this country. I happen to represent not only the American Distillery Co., but an ad hoc committee of distillers and 40 small bottlers and rectifiers throughout the country that are dependent upon this, who in my personal opinion, sir, would be wiped out if wine gallon, proof gallon, came in.

Senator RIBICOFF. Let me ask Mr. Cassidy, do you know whether this entire issue has been resolved?

Mr. CASSIDY. My understanding is that they have reached agreement with the Europeans. They are still negotiating, and they are still talking to the Japanese, but by no means has the issue been finished.

Senator RIBICOFF. My feeling is that I am trying to get this to be an equitable agreement and it is very obvious what has happened here, that you are being used as the tradeoff for something else.

Mr. BERKOWITZ. Yes, sir.

Mr. WATSON. Yes, sir.

Senator RIBICOFF. Whether they have taken into account the impact on your industry and the consumer in this tradeoff, I do not know, but I would be willing to suggest that you be given another opportunity to talk to our STR people in the next few days on this whole problem and certainly for then to consider whether there is a potential tradeoff that can be made to the advantage of the American distiller and producer and seller.

If this is something that you would be willing to undertake after this hearing, if you will talk to Mr. Cassidy, he will make an appointment for you to see one of Mr. Strauss' representatives for a full discussion of this problem. If this is something you will care for.

Mr. DAILEY. Yes, sir.

Mr. WATSON. Thank you.

Senator RIBICOFF. Senator Danforth?

Senator DANFORTH. Do you have a specific legislative proposal you would like Congress to consider?

Mr. WATSON. We propose no change. We think it has worked well and advantageously for the entire industry, import and domestic, for a long period of time. We see no reason for any change. Our whole industry has been built on this principle.

Senator RIBICOFF. Thank you, gentlemen, and Mr. Cassidy will arrange a meeting.

[The prepared statements of the preceding panel follow:]

STATEMENT OF STUART D. WATSON, CHAIRMAN OF THE BOARD, HEUBLEIN, INC.

Mr. Chairman and Members of the Subcommittee on International Trade, I am Stuart Watson, Chairman of Heublein, Inc., of Farmington, Conn. Seated beside me is Frank Dailey, president of the Kentucky Distillers Association.

We are members of the Distilled Spirits Council of the United States and represents the majority opinion of the members of that organization and of the U.S. distilling industry in opposing the proposed change in the historic system of taxing distilled spirits.

Without enumerating the 25 or more domestic distillers which take this same position, I would point out that we provide employment and contribute to economic development in states from coast to coast.

An opposite view on this proposal is held by the Seagram Distillers Company and Hiram Walker, Inc., both Canadian companies, and by the Scotch Whisky Association.

I am sorry to say that in the international trade negotiations just concluded, not one single foreign trade barrier to our U.S. industry was broken down and not one single competitive advantage was gained for our industry abroad—yet the proposed change in figuring excise taxes will subject us to severe new foreign competition on our home ground. This is exactly opposite of the stated objective of the 1974 Trade Act, and I quote—"to foster the economic growth of and full employment in the United States."

The proposal presently being considered for excise tax modification is presented on pages 1947–1948 of the Federal Register last January 8th. It would eliminate the wine-gallon method of tax and duty assessments on imported distilled spirits and substitute the proof-gallon method. This would provide a windfall in excess of $110 million a year to a handful of foreign companies, increasing their competitive advantage in this country, reducing taxes paid to the U.S. Treasury, worsen the U.S. balance of trade and prove extremely harmful to domestic manufacturers of distilled spirits.

The present excise tax on distilled spirits is $10.50 per gallon, whether imported or domestic-produced. All imports are taxed at this rate regardless of proof, up to 100 proof. Our company and many other domestic distillers import spirits in bulk at 100 proof and lower the proof at our plants to the widely consumed 86 or 80 proof. Thus, we obtain a final product competitively-priced when we bottled here.

Foreign companies are free to do the same by opening bottling plants in this country, and many of them have bottling plants here with unused capacity, but they choose to bottle abroad, so they pay the $10.50 excise tax on 86 or 80 proof imports. They want the premium image of a bottled, import product.

By charging the excise tax on a proof basis, the proposed change would take away the economic practicality of shipping into the United States in bulk. As a matter of fact, it could make it economically, and marketing-wise, advantageous to bottle outside of the U.S. and ship into this country, products that are now produced in the U.S.

A change in the method of assessing the excise tax would cause economic losses for the United States in several other respects. It would imperil some companies engaged in the distilling or rectification of distilled spirits. It would lead to job losses in these companies and their suppliers—particularly in the industries that furnish bottles, cartons and containers, caps and labels, for distilled spirits now imported in bulk and bottled here. It would worsen the trade balance of the United States, adding to the current annual trade deficit of $700 million in distilled spirits. It would deprive the U.S. Treasury of revenue officially estimated at $110 million annually, and any attempt to regain this revenue through higher domestic taxes will be passed on to consumers, adding to the inflationary spiral.

Our own company has major production facilities in Connecticut, California, Kentucky and Michigan. By importing Canadian and Scotch whiskies, rum and tequila, in bulk, we have been able to provide employment here in the U.S. and to sell at lower prices to consumers. If this bulk importing were made impractical, we should have to consider curtailing our U.S. production and open bottling plants abroad, particularly in Canada and Mexico. This would also mean manufacturing of spirits in other countries, and a tremendous loss to U.S. farmers who supply the grain for grain neutral spirits.

My company is the nation's largest purchaser of grain neutral spirits. Of our four bottling plants, the first to feel the effect of this change in the excise tax would be our two coastal plants in Hartford, Connecticut, and Menlo Park, California. Operations would wind down at these plants, causing a loss of more than 100 jobs. The annual loss could amount to more than 2,000,000 case-sales, valued at over $80 million.

This would bring additional unemployment and financial losses to our suppliers, affecting the trucking and printing industries, the suppliers of other purchased materials, and the glass container plants operating in Connecticut and California, which would lose annual production of more than 24 million bottles.

Surely this was not the intent of the Congress in passing the 1974 Trade Act!

The present method of levying the U.S. excise tax, which has been in effect now 110 years, is hardly a trade barrier, nor is it a protectionist measure.

Consider this record:

Imports of distilled spirits into the U.S. have grown by 500 per cent over the past 20 years. Meanwhile, U.S. import duties have been cut steadily and drastically since Repeal from $5.00 per tax gallon of Scotch to 51 cents today; and from $5.00 per tax gallon of Canadian whisky to 62 cents.

Foreign manufacturers enjoy another great advantage. Their shipments, made directly to U.S. wholesalers, require no tax payment until the product is shipped from the wholesaler to retailers. In contrast, the U.S. manufacturer of distilled spirits must pay the excise tax within an average of 23 days after he ships to the wholesaler. Consequently, tho foreign manufacturer enjoys a profitable advantage in the use of his money.

Furthermore, foreign distilled spirits are protected here by special appelations of country of origin. No. U.S. distillery may originate a product called Canadian, Scotch, Irish, cognac or tequila. U.S.-made bourbon is fighting for the same treatment abroad. We are also fighting high tariff barriers and a 24 percent discriminatory freight charge on shipments to Europe and the United Kingdom.

The proposed excise tax change would remove the bulk import advantage without gaining a single concession in breaking down foreign barriers. This is completely unfair.

The Congress expressed an objective for negotiations in Section 104 of the 1974 Trade Act:—"To obtain . . . competitive opportunities for U.S. exports to the developed countries of the world equivalent to the competitive opportunities afforded in U.S. markets to the importation of like or similar products . . ."

Yet the foreign barriers have not been broken down. In fact, your Committee should be aware that several major nations, including many which would benefit from this proposed agreement, impose a higher tariff on bottled imports of alcoholic beverages from the U.S. and other countries than they do on imports in bulk. Unfortunately, U.S. negotiators have not secured any change in this practice, either.

The foreign proponents for change in the wine gallon method of excise tax assessment have gone to court twice claiming discrimination, but the courts have ruled there is no discrimination because they choose to bottle abroad at less than 100 proof.

For all these reasons, we respectfully ask this Committee to urge the elimination of the excise tax change from the international trade agreements.

Surely, without compensatory concessions, our negotiators should not give away what the courts have twice denied.

STATEMENT OF MARSHALL L. BERKOWITZ, PRESIDENT, THE AMERICAN DISTILLING CO.

Mr. Chairman and Members of the Subcommittee to International Trade.

I am Marshall Berkowitz, president and chief operating officer of the American Distilling Company, and I want to thank you for the opportunity to participate in this hearing. I am here to present the views of an ad hoc committee of U.S. distillers. It is our intention to file a more detailed report on our position within the time assigned by your committee. A listing of the members of our group, which includes 40 of the nation's smaller distillers and rectifiers, is attached to my statement.

Mr. Chairman, in his message to the Congress published in the Federal Register on January 8, 1979, President Carter advised that the administration intends to sign an agreement as part of the multilateral trade negotiations that would favor foreign distillers by changing this government's 111-year-old method of assessing imported distilled spirits.

As U.S. distillers, we are unalterably opposed to such a change for these reasons.

(1) It would create further hardship for domestic whiskey makers already copying with a declining market.

(2) It would force domestic distillers who import Scotch and Canadian whiskies in bulk and bottle them in the U.S. to discontinue these operations and relocate their bottling plants abroad, forcing thousands of Americans out of work.

(3) It would deprive the U.S. Treasury of $120,000,000 annually in revenue on Scotch and Canadian whiskies alone, worsen this country's balance of payments and, concurrently, provide foreign liquor interests with a huge profit windfall.

(4) It would create a tax haven for domestic distillers with facilities in Canada by encouraging them to bottle many of their U.S.-made goods there, depriving that many more American workers of their jobs and American business of our patronage.

(5) It would ultimately result in higher liquid taxes and higher liquor prices to American consumers.

(6) And for what? To our knowledge, not one major concession has been made by any of the U.S. trading partners that would enable U.S. distillers to expand their sales abroad.

Presently, the U.S. excise tax on liquor, imported or domestic is the same: $10.50 per 100 proof gallon. Distillers who bottle their products aboard are taxed on a wine-gallon or liquid-gallon basis; that is, they pay the $10.50 per gallon rate whether the product is bottled at 86 proof, 80 proof or lower.

But when spirits are imported in containers or barrels, the bulk shipments enter at higher than 100 proof and are reduced in proof here. The importer benefits from both a tax saving and lower freight rates which he passed on to the consumer through lower retail costs. Bottled-in-U.S. Scotches and Canadians are usually $2.00 a fifth or more below the price of bottled-abroad spirits. The President's proposal would eliminate the wine-gallon assessment method and wipe out the price differential.

The issue before this committee is hardly new. Foreign shippers, particularly major Scotch and Canadian distillers, have been arguing for years that the taxing of imported spirits on a wine-gallon basis is discriminatory.

We disagree. So have our courts. In four different cases they have ruled that the present tax assessment method violates no treaty or trade agreement nor is it discriminatory, directly or indirectly.

Foreign distillers who bottle abroad do so by choice. They, too, have the privilege of shipping their spirits in bulk and bottling them at lower than 100 proof and thus benefit from the tax saving they are now pursuing through MTN

However, through countless millions in advertising they have promoted the idea that premium Scotches and premium Canadians are bottled in their country of origin.

A big segment of the public seems to believe them.

Frankly, what the proponents of change are seeking is the best of both worlds. They want to bottle their products in the home country to perpetuate that status symbol image but pay less for the privilege.

It certainly cannot be said that our tax laws have inhibited the growth of imported distilled spirits in this country. Today they represent almost one third of the total market while imported whiskies now account for almost one-half of the whiskey consumed by Americans.

In comparison, imported wines account for 19 per cent of the U.S. total wine consumption and imported beers represent only 1½ per cent of the malt beverage trade.

Changing taste patterns are the primary reason behind the domestic whiskey distillers plight. We survive by diversifying our product mix. For example, many of us have built up a fine business in bottled-in-U.S. Scotch and Canadian whiskies. Because of their lower retail costs these products appeal to consumers who want to buy imports but at prices they can better afford.

Now, if the Congress elects to eliminate the wine-gallon assessment method and foreign distillers who bottle abroad pass on the savings to consumers, they could effectively eliminate the U.S.-bottled import business because, as I noted earlier, the favorable pricing factor would no longer exist.

On the other hand, if foreign shippers were to retain their current pricing levels, based on today's import figures, they would pick up $120,000,000 in extra profits that could be invested in additional advertising to capture an even larger share of the U.S. market.

It should be noted that our present laws and regulations already put the U.S. distiller at a considerable disadvantage.

For example, bourbon must be aged in new, charred, white oak barrels that cost upwards of $60 apiece, and are in short supply. They can be used only once. Scotch and Canadian whiskies, however, can be aged in used cooperage, very often bourbon barrels purchased from us for about $6.00 apiece f.o.b., U.S.A. Their life expectancy is 30 years.

Then, too, for every gallon of blended whiskey that domemstic distillers make, they pay a rectification tax of 30 cents. Scotch, Canadian and Irish are all blends but are not required to pay such a tax.

Undoubtedly, one of the biggest advantages foreign distillers enjoy over our domestic industry is the privilege of bringing their bottled-abroad merchandise into this country "in bond," and thus defer tax payments for 90 to 150 days—or more! The importer can keep it "in bond" for as long as he wants and then ship to a wholesaler who, in turn, can keep it "in bond" until he is ready to sell it. It is only when the goods are finally shipped to the retailer that taxes are paid.

But the U.S. distiller doesn't enjoy such a breather. His grace period is no more than 20 days from the time the goods leave the plant. Which means he has to borrow the money to pay the taxes due and at today's high interest rates.

This is a form of discrimination in reverse!

Ergo, if the Congress, despite the objections of the domestic industry, decides to elminate what foreign distillers call a "discriminatory" tax, why not eliminate the other form of discrimination and require foreign shippers to pay the federal excise within the same time frame we do? It would put us all on an equal footing and step up payments by 90 days, giving the Government earlier access to some $700,000,000 a year.

Or, why not extend the same privilege to U.S. distillers? That is, permit the excise tax payments on their goods to be made within the time frame of foreign competitors by allowing domestic producers to ship U.S.-bottled merchandise "in bond".

Another consideration: If the Congress accedes to the request of the U.S. trading partners, domestic distillers who now market bulk imports would be forced to relocate their bottling plants abroad.

Furthermore, a change in the tax assessment method would, in effect, create a tax haven for domestic distillers fortunate enough to have plant facilities in Canada. Their U.S.-made gins, vodkas, cordials and brandies could be bottled there and shipped back to the U.S. "in bond," displaying the "imported" label.

Better yet, it would relieve the U.S. distiller of responsibility of financing the federal excise tax on these goods. The effect on the treasury would be a delay in the payment of the taxes due by 90 days or more to the tune of $1.1 billion annually.

Hardest hit, of course, would be our union labor and the people with whom we do business in this country (printers, truckers, glass, carton and paperboard manufacturers).

Mr. Chairman, the U.S. distilling industry has long hoped that it would one day achieve in other countries the generous considerations accorded foreign spirits here. We gather that day is still far off. From what we have learned, our negotiators have struck out, even though we understand that they have used this proposed change as a bargaining point to win concessions for other industries.

That doesn't sound like a fair deal to us.

As it stands now, we have nothing to gain—and much to lose—if the proposal is adopted. We hope that your committee agrees with us and that you will oppose any change in the U.S. tax assessment method on distilled spirits.

Thank you.

Statement of Abraham Buchman, Counsel, Independent American Whiskey Association

Resolved, That the Independent American Whiskey Association hereby goes on record and authorizes its officers, to take all necessary steps to oppose any change in the present method of Internal Revenue tax and duty assessment for distilled spirits, also known as the wine gallon/proof gallon. This position shall be brought to the attention of Congress and the Administration; explaining that any change will do violence to the long term method of tax collection, on both domestic and imported distilled spirits, and will most seriously affect American labor and American business, epecially the small business segment thereof.

LIST OF CORPORATE MEMBERSHIP

Alpha Industries, 740 Front Street, Helena, Mont.
American Distilling Co., 245 Park Avenue, New York, N.Y.
The Black Prince Distillery, Inc., POB 846–691 Clifton Ave., Clifton, N.J.
Bohemian Distributing Co., 11428 Sherman Way, North Hollywood, Calif.
The R. L. Buse Company, 2600 Carew Tower, Cincinnati, Ohio 45202
Distillerie Stock U.S.A. Ltd., 58–58 Laurel Hill Blvd., Woodside, N.Y.
Federal Distillers, Inc., 15 Monsignor O'Brien Highway, Cambridge, Mass.
Florida Distillers Co., P.O. Box 1447, Lake Alfred, Fla.
Glenmore Distilleries Co., 1700 Citizens Plaza, Louisville, Ky.
Ambur Distilled Products, Inc., 2101 West Camden, Glendale, Wis.
Austin Nichols & Co. Inc., 733 Third Avenue, New York, N.Y.
Blanchard Importing & Distributing Co., Inc., 21 Fellows Street, Boston, Mass.
J. T. S. Brown's Son Co., Carew Tower—32nd Floor, Cincinnati, Ohio
Consolidated Distilled Products, Inc., 3201 S. Kedzie Ave., Chicago, Ill.
Duggan's Distillers Products Co., 20 South Broadway, Yonkers, N.Y.
Felton & Sons, Inc., 516 E. Second St., South Boston, Mass.
Frank-Lin Distillers Products, Ltd., POB 424–625 North King Rd., San Jose, Calif.
William Grant & Sons, Inc., 130 Fieldcrest Ave.—Raritan Center, Edison, N.J.
David Sherman Corp., 5050 A Kemper Avenue, St. Louis, Mo.
Trojan Distributing Co., Inc., 5455 South Boyle Avenue, Los Angeles, Calif.
L. & E. Wertheimer, Inc., First National Bank Building, Cincinnati, Ohio
Standard Distillers Products, Inc., 306 East Lombard, Baltimore, Md.
M. S. Walker, 35–37 Wareham Street, Boston, Mass.

Senator Ribicoff. Mr. Lundquist, representing the Distilled Spirits Trade Expansion Committee.

STATEMENT OF JAMES H. LUNDQUIST, ESQ., BARNES, RICHARDSON, & COLBURN, ON BEHALF OF THE DISTILLED SPIRITS TRADE EXPANSION COMMITTEE

Mr. Lundquist. Good morning, Mr. Chairman and members of the committee. My name is Jim Lundquist and with me today is Mr. James D. Ford, vice president of Hiram Walker in Detroit.

Mr. Chairman, I appear here today to support congressional approval of the elimination of the historic discrimination brought about by assessment of imported bottled spirits through the wine gallon and proof gallon method previousy discussed.

I appear as counsel for the Distilled Spirits Committee for International Trade—DISCIT—which group includes nine major producers and importers. It is estimated that members of DISCIT account for well over one-half of imported bottles of Scotch, Canadian, cognac, brandies, and gin from various principal supplying countries.

Mr. Chairman, I have been with this issue for 25 years and have participated in the litigation, and throughout the litigation the courts have held that it is in Congress province to discriminate if it sees fit. So in my book, we are in exactly the right place today. We are reviewing this discriminatory tax before Congress, which the administrative agencies, of course, have declined to overrule.

Senator RIBICOFF. What response would you make to the discrimination against American-produced spirits?

Mr. LUNDQUIST. Mr. Chairman, the complaint about advertising in France is really a complaint after the fact.

Senator RIBICOFF. I do not understand that.

Mr. LUNDQUIST. The legislature in France has under review for the spring session of this year two categories of advertising applying to all spirits, whether they are grape spirits or grain spirits, and I think the end will be that advertising in the press and at the point of sale will be allowed for all spirits, and there will be a total nondiscriminatory ban on spirits advertising on radio and TV.

Also, they talked about the discriminatory excise tax in France. If the committee please, I would like to point out—and Mr. Strauss knows this—on January 1, 1979, that discrimination was withdrawn by the French Legislature. Advertising of grain spirits in Germany has always been appropriate, and I think you can see the sales of Jack Daniels and Southern Comfort on a steady rise in Europe where they compete regularly.

In short, it is our position that Mr. Strauss and Mr. McDonald and the staff and other negotiators are indeed working on these prior discriminations. I have no hard evidence they have been concluded, however. I must stress that.

Senator RIBICOFF. This would be important if you are negotiating on a certain category. Should you not take into account the relative advantages and disadvantages of one country over another?

Mr. LUNDQUIST. Mr. Chairman, I believe that that has been taken into account by the STR. I am not, of course, privy to the precise negotiations.

Elimination of the so-called wine gallon, proof gallon of assessment of imported bottles of distilled spirits through the current multilateral trade negotiations is justified and in accordance with the longstanding bipartisan policy of six administrations. Now, with adequate compensation, is the time for approval of this admitted nontariff form of discrimination.

Just to give you an idea of what this means, an importer of 86-proof bottles of Scotch whisky is unable to present his product for taxation at the overproof rate, therefore, must pay $10.50 per gallon, including the water, and just to quantify this, on a U.S. quart basis, this works out to an additional tax now paid by U.S. distillers of $1.47 per gallon, or 36¾ cents per bottle. If the bottled product is imported into the United States at only 80 proof, then the discrimination is 52.5 cents per quart.

When Congress considered customs simplification in 1951, Mr. Chairman, the Department of Treasury analysis of H.R. 1535, 82d Congress, 1st session, commented on a section of that bill, which would have eliminated the wine gallon anomaly. The wine gallon assessment:

> Operates inequitably as between domestic and imported distilled spirits, since the domestic spirits are always or nearly always above proof at the time of tax payment while imported beverage distilled spirits are generally under proof at the time of importation.

Thereafter, in 1954, in response to an inquiry, the then Assistant Secretary of State for Economic Affairs wrote:

> The Department shares your views that the effect of this tax is to discriminate against imported distilled spirits.

This position was affirmed during a GATT working party meeting in April 1970, when foreign representations were made that the U.S. wine gallon tax was discriminatory under GATT. The U.S. representative at this meeting acknowledged that the tax had a nontariff barrier effect that discriminated against imports of bottled distilled spirits.

Bringing it down to our current law, sir, there was recognition of the wine gallon issue in the 1974 work on H.R. 10710, by the House Committee on Ways and Means staff, and certainly it was approved by the Trade Subcommittee, at last. It listed wine gallon as one of the susceptible nontariff measures.

Aside from the inherent unfairness as it applies to imported distilled spirits, the wine gallon method should be abolished. The discriminatory method of assessment is unnecessary because it has obvious competitive effect, disadvantaging importers. Sales of imported spirits relates not to the cost factors alone but is based in substantial measure on individual preference for one type of beverage or another.

As stated for several decades, the unfair wine gallon method of taxation has been challenged by the executive department and indeed by members of our group, as inequitable and therefore in need of elimination. This dates back to 1948, Mr. Chairman, and notably the U.S. distilling industry has previously urged all foreign nations to adopt the proof gallon, or alcohol content, method of taxation and this reference is a statement by DISCIT to the trade policy staff committee on December 8, 1975.

As early as 1962, the Bureau of Alcohol, Tobacco, and firearms and, in 1977, the Comptroller General of the United States, reported that the methods used for the determination and payment of excise tax had generally remained unchanged since 1868 and in this regard, on wine gallon required manpower for BATF and the distilled spirits industry. Both agencies made sweeping recommendations for improvement, but recognized that none of these improvements could take place as long as the wine gallon method remained as a domestic impediment to change.

Currently, there is little or no foreign bottling capacity available to take up any possible shift to increased exportation in bottles rather than in bulk. The total investment needed to accomplish such change is so enormous that it is safe to say that no prudent investor would be prepared to put up the resources necessary to create offshore bottling capacity. Higher overall costs accompanied by lower productivity and frequent labor disruptions in principal supplying countries really makes such investments absurd. Importantly, consumer preferences tend to be directed by taste and brand image rather than cost and place of bottling.

Finally, the abolition of taxation of the water content on 20 or 14 percent water tends to be inflationary in anybody's book.

In conclusion, Mr. Chairman, it is DISCIT's position that the wine gallon proof gallon tax anomaly should be eliminated as it has been negotiated on a non-most-favored-nation basis where full compensation has been paid as a part of the MTM package. It is understood that our very excellent negotiating teams headed by Ambassador Strauss have obtained offsetting commitments on this wine gallon issue which are of real benefit to U.S. exports.

This means, of course, that the Senate and the House can, for the first time in my own experience, act on removal of the shadow over our old trade policy in the knowledge that beneficiaries have come forward with payments in full.

It is understood that changes in nontariff measures appying to U.S. distilled spirits exports have, or are, taking place, I averted to those earlier.

Senator RIBICOFF. I am curious. What are the offsetting benefits?

Mr. LUNDQUIST. The advertising requirements in France and the discriminatory taxation that has applied until January 1.

Of perhaps more importance is the willingness of the major supplying countries to recognize priority items on the U.S. shopping list for agricultural exports, and I notice, Mr. Chairman, that Witness Lewis from the Farm Bureau mentioned tobacco. We understand that there is a meaningful concession offered in counterpoint to tobacco, and also poultry is under active discussion.

In other words, it seems to us that for the first time our Ambassadors, or designated hitters, as they might be called, who are on the firing line have in hand substantial changes.

Mr. Chairman, to retain a discriminatory tax which has been acknowledge by six administrations and indeed a number of times by the courts, although they can do nothing about it, is unfair. It is like saying that because the guy has been able to fight back for 20 years with one arm tied behind his back it is not discriminatory to keep that arm tied.

In terms of the dollars that were thrown around, $2 a bottle difference is really more like it, $2 a gallon difference, not $1, and the customer preference for your premium brand Scotch whiskeys are not unlike customer preferences for some of our American-made electronics and machine tools. There is a customer preference for a bottled spirit, and as such, with all the costs of shipping and the increased charges, handling, and cost of glass with power shortages surely should not be added to by discriminatory tax, provided that on a most favored nation, the supplying countries will pay for that, whether it is in the alcoholic beverage sector or in the farms sector.

That concludes my statement.

Senator RIBICOFF. Senator Danforth?

Senator DANFORTH. No questions.

Senator RIBICOFF. Thank you very much.

[The prepared statement of Mr. Lundquist follows:]

STATEMENT OF JAMES H. LUNDQUIST ON BEHALF OF THE DISTILLED SPIRITS COMMITTEE FOR INTERNATIONAL TRADE

The Distilled Spirits Committee for International Trade (DISCIT) submits this testimony in support of Congressional approval of the President's tentative negotiation of international codes and other non-tariff measures, specifically approval of proposed elimination of the historic discrimination against imported bottled spirits resulting for assessment of U.S. excise tax on the wine gallon, rather than proof gallon, basis.

The Distilled Spirits Committee for International Trade (DISCIT) consists of nine major producers and importers including, Kobrand Corporation, Schenley Industries, Inc., The Buckingham Corporation, The Paddington Corporation, Hiram Walker & Sons, Inc., Somerset Importers, Ltd., Joseph E. Seagram & Sons, Inc., Renfield Importers, Ltd., and Schieffelin & Co. Each of these firms imports bottled distilled spirits including scotch whisky, gin, Canadian whisky, cognac, liqueurs, and other distilled bottled spirits. It is estimated that members of DISCIT account for well over one-half of all imported bottled scotch, Canadian, cognac, brandies, and gin from various principal supplying countries. They also account for well over 40% of the U.S. domestic production of distilled spirits.

Certain members of DISCIT have actively opposed the wine gallon assessment anomaly for over 25 years. Submissions were made on this issue as far back as the Dillon Round of trade talks in the 1950's, the Kennedy Round of the 60's, and now the so-called Tokyo Round. Throughout this period, we have exhausted all possible administrative remedies and have challenged the legality of this discriminatory basis of taxation before the U.S. Customs Court and the U.S. Court of Customs and Patent Appeals. It is fitting that the matter presently under negotiation is before the Senate.

Aside from the inherent unfairness of the wine gallon method of taxation as applied to imported distilled spirits, the wine gallon method should be abolished as not needed. When originally devised in 1868, this tax law served the principal purpose of prevention or discouragement of fraudulent practices by certain domestic producers. This reason for the wine gallon method as a preventative for fraud is no longer required under present day business and tax assessment practices. Moreover, as such a preventative, it was directed at domestic distillers, not importers; in point of fact, there has never been a valid purpose attached to the application of this tax to imported bottled spirits. The discriminatory method of assessment is unnecessary because while it has obvious competitive effects disadvantaging importers, the sale of imported spirits is the result not so much of cost factors, but in substantial measure due to the individual preference of the consumer for one type of beverage or another.

As stated, for several decades the unfair wine gallon method has been challenged by the Executive Department as well as our country's trading partners. The conclusion reached is that the law is inequitable and, therefore, in need of elimination. The issue has been raised in every round of multilateral trade negotiations since 1948, particularly by the European Economic Community and Canada. Notably, the U.S. distilling industry has previously urged that all foreign nations adopt the proof gallon (or alcohol content) method of tax assessment (Ref: statement by Distilled Spirits Council of the United States, Inc., to the Trade Policy Staff Committee, September 8, 1975).

As early as 1962, the Bureau of Alcohol, Tobacco and Firearms (BATF), and later in 1977 the Comptroller General of the United States, reported that the methods used for the determination and payment of excise tax had generally remained unchanged since 1968, and required excessive form-filling and manpower, both by the BATF and the Distilled Spirits industry. BATF and the Comptroller General both made sweeping recommendations for improvement of the excise tax system, but recognized that none of these suggested changes could be satisfactorily implemented as long as the wine gallon method of assessment continued to be used.

Our preliminary economic studies of the industry relating to this issue will be submitted to Staff in due course. However, it is clear from a preliminary review of the facts, and based on reports from members of DISCIT, that little or no change in hisoric patterns of international distilled spirits production and trade will result from the removal of the wine gallon basis of taxation. Currently, there is little or no foreign bottling capacity available to take up any possible shift to increased exportation in bottles rather than bulk. The total investment needed to accomplish such a change would be so enormous that it is safe to predict that no prudent investor would be prepared to put up the resources necessary to create such new capacity. Higher overall costs accompanied by lower productivity and frequent labor disruptions in the principal supplying countries, would make such investments absurd for a distiller to even seriously consider, let alone implement. Clearly, products already bottled in the United States will continue. Importantly, consumer preferences tend to be dictated by taste and brand image rather than by cost and the place of bottling. Abolition of taxation of the water content would, we believe, tend to moderate inflationary prices in the industry.

As the Senate considers approval of this negotiated removal of the wine gallon non-tariff barrier, DISCIT believes that it is important to remember that opposition to this NTB has been bipartisan and consistent. When Congress considered Customs simplification in 1951, the Department of Treasury Analysis of HR 1535, 82d Congr., 1st Session, commented on a section of that bill which would have eliminated the wine gallon anomaly, in part as follows: The Wine Gallon assessment—

> ". . . operates inequitably as between domestic and imported distilled spirits, since the domestic spirits are always or nearly always above proof at the time of tax payment while imported beverage distilled spirits are generally under proof at the time of importation." [1]

[1] Hearings on H.R. 1535, Simplification of Customs Administration, before the House Comm. on Ways and Means, 82d Cong., 1st Sess., pages 29, 30 (1951).

Thereafter, in 1954, in response to an inquiry, the then Assistant Secretary of State for Economic Affairs wrote:

> "The Department shares your views that the effect of this tax is to discriminate against imported distilled spirits."

This position was affirmed during a GATT Working Party meeting in April 1970, when foreign representations were made that the United States' wine gallon tax was discriminatory under GATT. The United States representative at this meeting acknowledged that the tax had a "non-tariff barrier" effect that discriminated against imports of bottled distilled spirits.[2]

[2] GATT Working Party on border tax adjustments, draft report spec. (70) 31/Rev. 1, 28 April 1970 at page 80.

There was recognition of the wine gallon method as a non-tariff barrier also in the Congress. In the course of its work and report on H.R. 10710, the House Committee on Ways and Means specifically listed the wine gallon method as an example of non-tariff barriers which may be subject to elimination by negotiation:[3]

[3] Staff of House Comm. on Ways and Means, 93d Cong., 1st sess., Report on Foreign Trade and Tariffs (Comm. Print 1973).

> "Although the President did have the authority to negotiate agreements on import restrictions other than duties under section 201 of the Trade Expansion Act, it was never utilized, nor intended to be utilized, to the extent contemplated under section 102 of the proposed bill. Under this section, the President could negotiate agreements with respect to any and all nonduty measures affecting trade. Such measures could include, for example: (1) ASP; (2) marking provisions; (3) standards codes; (4) wine gallon/proof gallon; (5) final list; (6) health and sanitary requirements; and (7) Customs classification, etc."

It has been alleged by certain interests that U.S. bourbon producers cannot compete in Europe. Indeed, over the past years there have been many impediments to grain-based spirit sales in advertising, particularly in the Common Market. Now, however, thanks in major part to the multilateral trade discussions and overall pressures brought to bear thereby, matters have changed considerably. U.S. made spirits can be freely sold and advertised in major European markets including Great Britain, Germany, Holland, and Belgium. Further, it is understood that France is preparing to act on legislation eliminating the prior advertising ban on grain-based spirits (allowing advertisement in the press and at point of sale). Further, the French discriminatory rate of excise taxation was formally withdrawn on January 1, 1979.

In conclusion, it is DISCIT's position that the wine gallon tax anomaly should be eliminated, as it has been negotiated: on a non most-favored-nation basis, with full compensation being granted to the USA by principal supplying countries as a part of the MTN package. It is understood that our very excellent negotiating teams headed by Ambassador Strauss, have obtained offsetting commitments which are of real and long-term benefit to United States exporters. This means, of course, that the Senate and the House of Representatives can, for the first time in more than 20 years, consider removal of this shadow over our entire trade policy in the knowledge that beneficiary countries will have come forward with payment-in-full. It is understood that changes in non-tariff measures still applying to certain U.S. distilled spirits exports have also taken place. But of, perhaps, more importance is the willingness of major supplying countries to recognize priority items requested by the U.S. for agricultural exports including tobacco.

Respectfully submitted,

JAMES H. LUNDQUIST, *Of Counsel.*

DISCIT MEMBERS

Kobrand Corporation, 134 East 40th Street, New York, N.Y. 10016.
Schenley Industries, Inc., 888 Seventh Avenue, New York, N.Y. 10019.
The Buckingham Corporation, 620 Fifth Avenue, New York, N.Y. 10020.
The Paddington Corporation, 630 Fifth Avenue, New York, N.Y. 10020.
Hiram Walker & Sons, Inc., P.O. Box 14100, Detroit, Mich. 48214.
Somerset Importers, Ltd., 1114 Avenue of the Americas, New York, N.Y. 10036.
Joseph E. Seagram & Sons, Inc., 374 Park Avenue, New York, N.Y. 10022.
Renfield Importers, Ltd., 919 Third Avenue, New York, N.Y. 10022.
Schieffelin & Co., 30 Cooper Square, New York, N.Y. 10003.
James H. Lundquist, 475 Park Avenue South, New York, N.Y. 10016, Counsel.
E. A. Jaenke, J. Waters, 1735 Eye Street, NW., Washington, D.C. 20006, Consultants.

Senator RIBICOFF. Mr. O'Brien?

STATEMENT OF LEE A. GREENBAUM, JR., PRESIDENT, KEMP & BEATLEY, INC., ACCOMPANIED BY GERALD O'BRIEN, EXECUTIVE VICE PRESIDENT, AMERICAN IMPORTERS ASSOCIATION AND DAVID PALMETER, COUNSEL

Mr. GREENBAUM. My name is Lee A. Greenbaum, Jr. I am going to be testifying instead of Mr. O'Brien. I am president of Kemp & Beatley, Inc., of New York City. My company is an importer and exporter and domestic manufacturer of table linens. I appear here in my capacity as vice president of the American Importers Association and specifically as chairman of its trade policy committee.

I am accompanied by Gerald O'Brien, executive vice president of AIA and David Palmeter of the law firm of Daniels, Houlihan & Palmeter, Washington counsel.

The American Importers Association is a non-profit organization formed in 1921 to foster and protect the importing business in the United States. As the only association of national scope representing American companies engaged in the important trade, AIA is the recognized spokesman for importers throughout the Nation. At present, AIA is composed of nearly 1,300 American firms directly or indirectly involved with the importation and distribution of goods produced outside the United States. Its membership includes importers, explorers, import agents, broker retailers, domestic manufacturers, customs brokers, attorneys, banks, steamship lines, airlines, insurance companies, and others connected with foreign trade.

We welcome this opportunity to present our views on issues relating to implementation of the multilateral trade negotiations.

The committee will appreciate, however, that the unusual manner in which these matters must be considered presents certain difficulties for AIA and, we presume, for other organizations concerned with international trade. Although descriptions of possible trade agreements that are still being negotiated have been made public, it is difficult to comment thoroughly on agreements that are not yet in final form, and upon legislation which has not been drafted.

This committee has asked for comment on existing law that may be affected by the trade agreements. The American Importers Association strongly urges that the Congress and the administration include in the implementing legislation package only, we repeat, only such changes in existing law as are necessary to give effect to the new trade agreements. Any other changes in the existing law should be required to go through the normal legislative process, not the yes or no system set forth in the Trade Act of 1974.

While the President's spokesman assured us that the act's goal of an open, nondiscriminatory and fair world economic system is being achieved, we are concened that this is not the case. We are concerned that the apparent appeasement of some industries might be at too high a price for the modest trade liberalization that the negotiations, at this juncture, seemed to offer. I would like to remind you of Peter Drucker's warning on trade policy in his book, "The Age of Discontinuity," that we must put productive resources into tomorrow's work: the high knowledge, high technology industries.

He points out that when Britain made trade concessions, they sought protection for their old industries and gave up support for their new industries. Japan, on the contrary, was willing to phase out some of the old industries and pushed for and advanced their new industries. The trade results are very apparent.

Time limits. The American importers oppose reduction in the time permitted for investigations under the Antidumping Act and the escape clause. The time permitting for a countervailing duty act investigation might be reduced, as recommended. The Antidumping Act, at the present time limit, should not be changed. On the countervailing duty act, the law should require three or perhaps four determinations.

One, the preliminary in 4 months, or in a complicated case, 7 months. Two, the final 3 months after the preliminary; and three, material injury—3 months after final if appropriate requests are made.

Where there is little likelihood of injury, we suggest that a 30-day ITC determination, as in the antidumping procedures, would be appropriate to save unnecessary cost, time and unwarranted uncertainties.

On specific issues of interest to the committee, on the question of the administering agency for countervailing and antidumping duties, proposals to change the agencies responsible for the enforcement of trade laws require separate consideration by Congress. Is this legislation the time or place for a thorough consideration of the restructuring of Government agencies dealing with trade? We think not.

On the question of definition of injury, we believe that material injury should be the standard.

Definition of like product. We suggest the utilization of the phrase "like or directly competitive."

On duties smaller than the amount of subsidy, we believe that duties smaller than net subsidy should be permitted.

Termination of investigations should be permitted.

On the question of judicial review, we would like to stress that importers, as a matter of equity, really should have access to the courts and should be in the judicial process no later than domestic industries. They should not have to wait for long periods. Uncertainty is an enemy of trade.

On the countervailing duty act, we understand that serious consideration is being given to proposals that would reduce the time allowed for countervailing duty investigations. Generally these proposals call for a preliminary determination within 3 to 4 months rather than the present 6 months and an identical reduction in the time permitted to reach a final determination.

If a preliminary determination were affirmative, these proposals call for a suspension of liquidation on imports on the products concerned and referral of the case to the International Trade Commission for an injury determination.

The issues presented to the Secretary of the Treasury in most countervailing duty cases are less complicated than those presented in most antidumping cases. For this reason, in our view there is justification for shortening the present 1-year Treasury investigation period.

The new countervailing duty act, in addition to containing the material injury requirement, should call for three determinations in parallel to the present Antidumping Act. The preliminary determination as to the existence and possible amount of a subsidy; a final determination on these questions; and a determination on the question of injury.

The code provides, as it should, that before countervailing duties may be imposed, it is necessary to establish not only the existence of a subsidy and injury, but a causal connection between the two. It would be difficult, if not impossible, to determine whether injury in fact is caused by a subsidy if the amount of that subsidy is not known at the time that the question of injury is being considered.

The amount of the subsidy must be known before it can be determined that the subsidy is causing material injury.

We realize that the countervailing duty subsidies code specifically seems to call, however, for just such a simultaneous consideration at the same time that it appears to call for adequate exploration of the question of causation. As we have noted, the antidumping code does the same.

We propose, therefore, that the new countervailing duty act provide for the same solution to this problem as has been made in the U.S. antidumping law, that is, withholding of appraisement or suspension of liquidation for an additional 3 months at the request of interested parties or perhaps in the case of the countervailing duty act of the foreign government.

A request for a 6-month rather than 3-month suspension of liquidation could afford an interested exporter, importer or foreign government review of the question of causation based on the final subsidy determination, but would provide, as the Antidumping Act now provides, for simultaneous determinations for those parties who do not wish complete consideration on the question of causation.

We emphasize that even countervailing duties technically would not be imposed for an additional 3 months under our proposed procedure. The real penalty against the exporter and the importer, suspension of liquidation, would be in effect even longer than otherwise would be the case. The importer and exporter and foreign government who would request extended suspension of liquidation would operate under a continuing penalty.

In conclusion, AIA wishes to reiterate its concern over the price consumers and importers apparently are being asked to pay in the form of one protectionist concession after another to secure implementation of the reportedly liberalizing MTN package. We urge the committee and Congress to reject attempts to buy this package with quotas or other protectionist devices. To this end, we urge the committee to enact only legislation necessary to implement the package.

Along that line, we do not think that the Congress fully appreciates the strength of our textile industry. Fiber exports are strong. We are able to export fibers at low cost in this world today. Those weaving mills that are strong in technology and in marketing are doing a good job, holding their own domestically and are exporting. It is hard to get a neutral opinion; 5.9 percent of Dan River was bought by a Hong Kong company, Dan River Mills. They must think that the American textile industry is not a bunch of hopeless cripples.

We also ask that our entire statement be accepted for the record.

Senator RIBICOFF. Without objection, your entire statement will go into the record as if read.

Thank you very much, gentlemen.

Senator DANFORTH. No questions.

Senator RIBICOFF. Thank you, gentlemen.

[The prepared statement of Mr. Greenbaum follows:]

STATEMENT OF LEE GREENBAUM, JR., PRESIDENT, KEMP & BEATLEY, INC., VICE PRESIDENT, AMERICAN IMPORTERS ASSOCIATION

SUMMARY

I. *Introduction.*—The results of the negotiations mandated by the Trade Act of 1974 are becoming known. While the President's spokesmen assure us that the Act's goal of an "open, nondiscriminatory, and fair world economic system" is being achieved, we are concerned that this is not the case. We are concerned that the apparent appeasement of some industries might be at too high a price for the modest trade liberalization the negotiations at this juncture seem to offer.

II. *Time Limits.*—AIA opposes reduction in the time permitted for investigations under the Antidumping Act and the Escape Clause. The time permitted for a Countervailing Duty Act investigation might be reduced, as recommended.

A. The Antidumping Act. The present time limits should not be changed.

B. The Countervailing Duty Act. The law should require three determinations:

(1) Preliminary—in four months, or, in a complicated case, seven months;

(2) Final—three months after preliminary;

(3) Material Injury—three months after final if appropriate requests made.

C. The Escape Clause. The present time limits should not be changed.

III. *Specific Issues of Committee Interest.*—A. Countervailing and Antidumping Duties:

(1) *Administering Agency*—Proposals to change the agencies responsible for enforcement of the trade laws require separate consideration by the Congress.

(2) *Definition of "Injury"*—"Material" injury should be the standard.

(3) *Definition of Like Product*—Utilize the phrase "like or directly competitive".

(4) *Duties Smaller than the Amount of the Subsidy*—should be permitted.

(5) *Termination of Investigations*—should be permitted.

(6) *Judicial Review*—Importers should have access to the courts at a point in the process no later than domestic industries.

B. Safeguards. Most-favored-nation principle should be retained.

C. Valuation. Transaction value should be the preferred method of valuation, except in clearly specified circumstances.

Mr. Chairman and members of the Committee: My name is Lee A. Greenbaum, Jr. I am President of Kemp & Beatley, Inc., of New York City. My company is an importer, exporter, and domestic manufacturer of table linens. I appear here in my capacity as Vice President of the American Importers Association (AIA), 420 Lexington Avenue, New York City, and specifically as Chairman of its Trade Policy Committee. I am accompanied by Gerald O'Brien, Executive Vice President of AIA, and David Palmeter of the law firm of Daniels, Houlihan & Palmeter, Washington counsel.

The American Importers Association is a nonprofit organization formed in 1921 to foster and protect the importing business in the United States. As the only association of national scope representing American companies engaged in the import trade, AIA is the recognized spokesman for importers throughout the nation. At present, AIA is composed of nearly 1,300 American firms directly or indirectly involved with the importation and distribution of goods produced outside the United States. Its membership includes importers, exporters, import agents, brokers, retailers, domestic manufacturers, customs brokers, attorneys, banks, steamship lines, airlines, insurance companies and others connected with foreign trade.

We welcome this opportunity to present our views on issues relating to implementation of the Multilateral Trade Negotiations (MTN).

The committee will appreciate, however, that the unusual manner in which these matters must be considered presents certain difficulties for AIA, and we presume, other organizations concerned with international trade. Although descriptions of possible trade agreements that are still being negotiated have been made public, it is difficult to comment thoroughly on agreements that are not yet in final form, and upon legislation which has not been drafted.

Nonetheless, we are grateful for this opportunity to offer our suggestions as to what the legislation should include. This is particulary true because, as we understand the mandate of the Trade Act of 1974, any amendments to the legislation are prohibited.

It is good, therefore, for organizations such as AIA to have an opportunity to contribute, in however small a way, to the actual creation of the legislation, rather than simply to comment on what already has been drafted. However, we would not want our remarks here to be misconstruer as necessarily endorsing or opposing the overall package that we understand eventually will be presented to the Congress by the President. AIA's position on that simple yes or no vote will be determined by its Board of Directors after we have examined the final result of this ongoing process in which we are pleased to be able to participate.

I. INTRODUCTION

In the Trade Act of 1974, the Congress gave the President an unprecedented mandate to go forward and negotiate with our trading partners for the "development of an open, nondiscriminatory, and fair world economic system." Congress expressed its concern that barriers to international trade were "preventing the development of open and nondiscriminatory trade among nations." Accordingly, Congress authorized the President to enter into trade agreements providing for the harmonization, reduction, or elimination of these barriers and distortions.

The results of these negotiations are now beginning to come before us, and we are told that the President has achieved, or is achieving, the goals established by Congress.

We are not sure.

Press reports daily suggest that the price that appears is being paid for this reportedly trade liberalizing package is escalating. There are reports that products ranging from steel to textiles, from dinnerware to dairy products, actually would be subject to even more restrictive import regimes than apply now. We wonder whether the overall results of the Multilateral Trade Negotiations (MTN) will in fact be trade liberalizing. We wonder further, what other prices will be paid in order to obtain the support—or the absence of opposition—of protectionist elements in the United States. We suggest to this Committee and to the Congress that the price importers and consumers will be asked to pay to obtain approval of the MTN package could well be too high.

This committee has invited interested parties to comment on "* * * changes to existing law which may be affected by the trade agreements * * *" The American Importers Association strongly urges that the Congress and the

Administration include in the implementing legislation package only, repeat only, such changes in existing law as are necessary to give effect to the new trade agreements. Any other changes in existing law should be required to go through the normal legislative process, not the yes or no system set forth in the Trade Act of 1974.

II. TIME LIMITS

One of the most controversial topics today is how long Federal agencies should be given to enforce the statutes and regulations governing imports. Proposals are being widely discussed that would greatly shorten the time permitted for investigations under the Antidumping Act, the Countervailing Duty Act, and the Escape Clause. With the exception of the Countervailing Duty Act, we believe the shortening of time limits for these investigations not only is unnecessary, but could be grossly unfair to importers and their exporter-suppliers.

A. The Antidumping Act

Under the Antidumping Act, withholding of appraisement begins at the time of a tentative determination of sales at less than fair value. This is not later than seven months (or in rare cases ten months) from the date a complaint is filed with the Treasury: the 30-day summary investigation at Treasury plus the six month Customs investigation (or the rare nine month Customs investigation in a "complicated" case).

From the point of view of the exporter to the United States, this schedule is anything but excessive. Usually the exporter does not know of the filing of a complaint before notice is published in the Federal Register. Questionnaires usually are sent to the known exporters contemporaneously with the institution of an investigation. (In some cases, neither the complainant nor the Customs Service at the time of initiation of an investigation even knows the identity of all of the exporters concerned; these exporters, when located and notified, are under severe time constraints.) Exporters who receive questionnaires are given 30 days, with perhaps a 15-day extension, to respond.

These questionnaires from Customs ask for extensive financial and technical information. The typical response to an antidumping questionnaire is of necessity a massive document. Frequently, the data requested are of a type or in a form that is not even kept by most businesses, a factor which adds to the exporter's burden. In addition, the amendments to the Trade Act of 1974, bringing Sales Below Cost of Production within the ambit of the Act in certain circumstances, has added enormously to the burden of responding to a questionnaire. All of this takes time.

It is difficult to conceive how this can be otherwise. In earlier years, perhaps, when products in international trade were simpler, responses also were simpler. It is one thing to compare prices in two markets for a basic commodity such as a grain or a chemical. It is quite another to compare prices for sophisticated consumer and high-technology industrial products. Comparisons of such merchandise are extremely complicated and time consuming.

It is interesting to contrast the exporter's administrative burden in responding to a questionnaire to that of the American taxpayer. The taxpayer is given until April 15 to submit a tax return for the close of the previous calendar year—75 days. Moreover, the taxpayer knows in advance that the return will be due, and knows further the type of information that will be required. Finally, the instructions received will be in the taxpayer's native language.

An exporter, on the other hand, has only 45 days—as contrasted with the taxpayer's 75—to respond to a questionnaire that he usually does not know is coming, which asks for information that he frequently, normally, will not keep, and which is in English rather than his native language.

An American complainant in an antidumping case receives effective relief—withholding of appraisement—in seven months in most cases, and in ten months in an occasional "complicated" case. He receives this relief, and consequent detriment to the exporter and the importer, even if there is no injury in the case. This time period is not unreasonable, particularly if the Committee considers the delays that occur throughout our system of justice for all kinds of disputes. Any reduction from the present time limits would so compress the basic fair value investigation as to make the determination one of extremely limited credibility and accuracy.

B. Countervailing Duty Act

We understand that serious consideration is being given to proposals that would reduce the time allowed for Countervailing Duty Act investigations.

Generally, these proposals call for a preliminary determination within three to four months, rather than the present six months, and an identical reduction in the time permitted to reach a final determination. If a preliminary determination were affirmative, these proposals call for suspension of liquidation on imports of the products concerned, and referral of the case to the International Trade Commission for an injury determination.

The issues presented to the Secretary of the Treasury in most Countervailing Duty cases are less complicated than those presented in most Antidumping Act cases. For this reason, in our view, there is justification for shortening the present one year Treasury investigation period.

The new Countervailing Duty Act—in addition to containing a material injury requirement as we discuss elsewhere—should call for three determinations, in parallel with the present Antidumping Act: (1) a preliminary determination as to the existence and possible amount of a subsidy; (2) a final determination on these questions; and (3) a determination on the question of injury.

(1) *Preliminary determination.*—Presently the Secretary of the Treasury is required to make a preliminary determination in Countervailing Duty Act cases within six months. Proposals have been made to reduce this period to four months, and we believe that in most cases four months would be a reasonable time. Anything less could cause difficulties for foreign governments and exporters in other nations simply in terms of gathering the data and responding to questionnaries in time for the response to receive meaningful analysis. It should be anticipated, moreover, that in many cases the initial responses to questionnaires themselves may generate further questions from the United States Government, or otherwise raise matters that would have to be clarified. It would be short-sighted to assume that most cases could be handled by the presentation of a simple questionnaire and a simple response. This is particularly likely to be the case when so-called "domestic subsidies" are involved.

This four month investigation period would be the time in which the basic information concerning alleged foreign subsidies and practices would be gathered by Treasury. It would provide, in effect, the record for subsequent Treasury review, prior to the final determination, and possible judicial review of that final determination.

Because of the importance of this basic phase of the investigation, leading to a preliminary determination, we believe that the law should permit a particular case to be termed a "complicated" case, and the investigation extended for a maximum of three months.

We recommend that the Countervailing Duty Act contain a provision parallel to that contained in the present Antidumping Act, which requires the Secretary of the Treasury, before extending the investigation, to make a specific finding that a particular case is "complicated", and to publish the reasons for this determination in the Federal Register. We do not believe that it is likely that "complicated" cases would occur any more frequently under the Countervailing Duty Act than they do under the Antidumping Act. Nonetheless, an occasional complicated case could occur. Given this likelihood, the sensitivity of the issues frequently involved in Countervailing Duty Act cases and the need for fairness throughout the procedure argue for the existence of a provision that would permit extension of these occasional cases.

Of course, if a preliminary determination is affirmative, we would expect that the law would provide for withholding of appraisement or suspension of liquidation at that time.

(2) *Final determination.*—Effectively, under present law, the Secretary of the Treasury has six months to reach a final determination. We believe that the new law could shorten this time to three months—provided that adequate time has been allowed for thorough investigation of the underlying facts during the period preceding the preliminary determination. A three month review period presently is utilized in Antidumping cases; in our view, a comparable period would be adequate for Countervailing Duty cases as well. A period after a preliminary determination, leading to a final determination, should provide interested parties an opportunity to specify with some precision the specific issues they wish to raise for reconsideration and possible reversal at the time of the final determination. These issues could be argued and briefed at an informal administrative hearing as is presently the case under the Antidumping Act.

(3) *Injury determination.*—The drafts of the Countervailing Duty Act/Subsidies Code that have been circulated indicate a requirement for simultaneous

investigation of the question of injury and subsidies. Similar provisions already are contained in the Antidumping Code.

We believe that there are serious problems with the simultaneous consideration of the question of injury and the question of the existence of a subsidy. These problems go far beyond the minor administrative burden that simultaneous consideration of these two questions would place on the parties. The crucial matter is the adequate consideration of the question of "causation" in reaching an injury determination.

The draft Code provides, as it should, that before Countervailing Duties may be imposed, it is necessary to establish not only the existence of a subsidy and injury, but a causal connection between the two. It would be difficult, if not impossible, to determine whether injury in fact is caused by a subsidy, if the amount of that subsidy is not known at the time the question of injury is being considered.

In cases under the Antidumping Act, the magnitude of Less Than Fair Value margins often has important bearing on the determination of injury. Similarly, in cases under the new Countervailing Duty Act, the magnitude of possible subsidies will have important bearing on the determination of injury. LTFV margins—or subsidies—of 100 percent are likely to have a different impact on a U.S. industry than LTFV margins—or subsidies—of one percent. In short, the amount of a subsidy must be known before it can be determined that the subsidy is causing material injury.

We understand that some have suggested that this problem could be avoided by providing that the injury determination be due 30 days after the final determination on the question of subsidy. Whether the question of injury is determined by the International Trade Commission or some other agency, we believe it unrealistic to expect a thorough and detailed investigation of the question of causation in such a short period of time. Consideration of causation in this context would merely be an appendix to a major investigation that presumably already would have occurred. Parties in all probability would not even have an opportunity to appear in person at a public hearing and argue adequately the question of causation.

I repeat that we realize that the Countervailing Duty/Subsidies Code specifically seems to call, however, for just such simultaneous consideration at the same time that it appears to call for adequate exploration of the question of causation. As we have noted also, the Antidumping Codes does the same. We propose, therefore, that the new Countervailing Duty Act provide for the same solution to this problem that is contained in the U.S. Antidumping Law: that is, that withholding of appraisement, or suspension of liquidation, be extended for an additional three months at the request of interested parties—or perhaps in the case of the Countervailing Duty Act, the foreign government.

A request for a six month, rather than a three month, suspension of liquidation would afford an interested exporter, importer or foreign government review of the question of causation based upon the final subsidy determination, but would provide—as the Antidumping Act now provides—for simultaneous determinations for those parties who do not wish complete consideration of the question of causation.

We emphasize that even Countervailing Duties technically would not be imposed for an additional three months under our proposed procedure, the real penalty against the exporter and the importer—suspension of liquidation—would be in effect even longer than otherwise would be the case. The importer and exporter, and the foreign government, who would request extended suspension of liquidation would operate under a continuing penalty.

C. The escape clause

We understand proposals are under consideration that would shorten the Escape Clause investigation by the International Trade Commission from the present six months to 90 days; and reduce the period of Presidential consideration from the present 60 days to 30 days. An amendment to achieve such changes would be unnecessary and unfair.

It is unnecessary, in our view, because there has been no showing of need in any prior case of which we are aware. No industry went bankrupt or was threatened with bankruptcy, or any serious difficulty, because of the six month Escape Clause investigation so far as we are aware. What, then, is the problem such proposals are intended to cure? Where and when did they arise?

The shortening of the Escape Clause investigation at the ITC to a mere 90 days would be particularly unfair to importers and exporters. It is frequently said that since the ITC needs only 90 days for an injury investigation under the Antidumping Act, there is no need for anything longer under the Escape Clause. This definitely is not the case.

In an Antidumping investigation, exporters already usually are represented by counsel, and importers are aware of the proceeding. Thus, they are able to organize and prepare their cases.

An Escape Clause investigation, however, is a totally different matter. Importers and exporters have no practical notice ahead of time that a case is being contemplated—although the complainant, of course, has all the time in the world to prepare its side of the case. Frequently, complaints are filed in industries where importers are not organized, are not represented by counsel, and indeed, in many cases do not even know what the International Trade Commission and the Escape Clause are. Considerable time in these cases therefore is spent simply getting organized and obtaining information.

A mere 90-day investigation with a hearing scheduled at the approximate mid-point (six weeks after initiation of an investigation) simply would not give importers and foreign exporters adequate notice to prepare their side of the case.

To be sure, the interests and rights of domestic industries are involved in these matters, but so are the rights of American importers. Importers, too, are entitled to procedures which permit them fair opportunity to prepare their cases properly. Telescoping the Escape Clause procedure to a mere 90 days at the ITC would deprive importers of this fundamental right.

Finally, we believe that the 60 day period required for Presidential determination should not be shortened. The International Trade Commission should not be able (perhaps by as few as a mere majority) to reduce by half the amount of time the President has to consider these important matters. The 30 days contemplated for Presidential review in some proposals we have heard, would barely be time for the formation of an interagency task force on a problem, let alone provide for adequate consideration of all of the matters the President must consider.

In short, no one has demonstrated any need for this type of change in the Escape Clause. Consequently, the time limits should be left as they are.

III. SPECIFIC ISSUES OF COMMITTEE INTEREST

The Committee has asked for comments on some specific issues which I now would like to address insofar as I am able. Given the shortness of time, the Board of Directors of the American Importers Association has not been able to authorize me to make specific recommendations. I can, however, comment on several of these matters.

A. Countervailing and antidumping duties

(1) *Administering agency.*—There have been substantial discussions, we understand, concerning the shift of the Secretary of the Treasury's function in both Countervailing Duties and Anitdumping Duties to other agencies, or perhaps to a totally new agency.

The present jurisdiction of the Treasury Department in the matter of Countervailing and Antidumping Duties is purely historical, having to do with the revenue aspects of Customs duties. Certainly there is no compelling logical reason why this particular function should, in the last third of the Twentieth Century, remain with the Department to which it was assigned in the last third of the Nineteenth Century.

But so far as we can see, there is no compelling reason to shift the function elsewhere. More important than who makes the decision is its quality. This in turn is a function of the quality of the personnel making that decision, and their number in relation to their caseload.

We are aware that there has been much criticism leveled at the Treasury Department in recent years concerning its administration of both the Countervailing Duty Act and the Antidumping Act. Indeed, we would be less than candid were we not to admit that a substantial portion of that criticism has emanated from the import community. Importers frequently have felt that Treasury decisions were arbitrary, ignored reality, were unfair, or were inordinately delayed or in any of a myriad of other ways were not what they should have been. Many times importers would have been delighted or any other agency to have made the decision for the simple reason that it could not have been any worse from the importer's point of view.

42-978—1979——4

The question is, however, what agency is equipped to do a better job? We believe that at the very least this is a major question, particularly insofar as it relates to proposals that all of the trade functions of the United States Government should be lodged in a single agency. We do not believe that these proposals should be accepted or rejected in the context of the Congress' consideration of the implementation of the Multilateral Trade Negotiation package. We suggest that these proposals themselves are important enough to merit separate consideration by the Congress. They are too important to risk their being inadequately considered within the context of something of the magnitude of the MTN package.

(2) *Definition of "injury"*.—The proposed Countervailing Duty Code defines injury to mean "material" injury to a domestic industry, or threat of material injury. This language differs from the "serious" injury of the Escape Clause contained in Section 201 of the Trade Act of 1974, and the unmodified term "injury" in the Antidumping Act. The implementing legislation should use the term "material injury" since this is the term that the United States has just approved through negotiation of the Code. The legislative history, moreover, should make clear that the term "material" injury, while something less than the "serious" injury required for an an affirmative finding under the Escape Clause, is substantially more than the mere unmodified "injury" of the Antidumping Act.

(3) *Definition of like product*.—The term "like product" as used in the code is explained as "alike in all respects to the product under consideration or in the absence of such a product, another product which, although not alike in all respects, has characteristics closely resembling those of the product under consideration." We suggest that this concept is very close to and is the substantial equivalent of, the term "like or directly competitive" as it appears in the Escape Clause. (Trade Act of 1974, Section 201). The use of the term "like or directly competitive" would encompass notion of substitutability or competitive impact when appropriate, and would have the advantage of utilizing a term already familiar in American trade law.

(4) *Duties smaller than the amount of the subsidy*.—We see no objection to United States law permitting Countervailing Duties less than the amount of a subsidy, if the lesser duty would "remove the injury". After all, injury is what import restrictions are all about. We believe that the law should provide for an International Trade Commission determination of the amount of Countervailing Duty, less than the amount of the subsidy, necessary to "remove the injury". Such a determination could be based upon factors the Commission already uses in establishing recommended tariff levels for its recommendations under the Escape Clause.

(5) *Termination of investigation*.—Administrators of the Countervailing Duty law should have authority to terminate investigations, in appropriate circumstances. These might include undertakings referred to in the Code.

(6) *Judicial review*.—Judicial review of Treasury determinations under the Countervailing Duty and Antidumping Acts is provided for in Sections 514 through 516 of the Tariff Act of 1930. As the Committee is no doubt aware, amendments to Section 516 in the Trade Act of 1974 brought to the domestic industry judicial review of negative Countervailing Duty determinations for the first time.

This attempt to provide equal opportunity for judicial review as between domestic industries and importers, however, has not succeeded. Domestic industries may obtain immediate judicial review of negative Treasury determinations, but importers may not obtain immediate judicial review of negative Treasury determinations, but importers may not obtain immediate judicial review of affirmative determinations.

We must wait to protest an entry, which, in the case of the Antidumping Act, requires the preparation of master lists and the actual assessment and collection of a dumping duty. As this committee well knows, this can take years. The result, therefore, is to deprive importers of the effective judicial review that was extended to domestic interests by the Trade Act of 1974. Accordingly, the implementing legislation should specifically provide that importers may seek review in the Customs Court of affirmative determinations in Countervailing Duty and Antidumping cases to parallel the review available to domestic industries.

B. Safeguards

As the Committee's statement indicates, the proposed Safeguard Code may permit departures from most-favored-nation treatment in a number of instances.

Universal application of most-favored-nation treatment has been a goal of United States trade policy since at least the 1930's. Departures from MFN principles by others frequently have resulted in discrimination against the United States. No doubt these factors had great bearing on the MFN principles that underlie GATT. Congress should reject proposals to depart from MFN except in special circumstances, such as the broad, internationally recognized program of preferences for developing countries. After all, as was said at the outset of this statement, the purpose of the Trade Act of 1974, and the negotiations it authorizes, is "to promote the development of an open, *nondiscriminatory*, and fair world economic system. . . ." [Emphasis added]

C. Valuation

AIA is able to respond in detail to the Committee's request for recommendations on how the new Customs Valuation Code should be implemented, primarily because AIA, in the last several years, has been directly involved in the development of the Code in Geneva.

In late 1972 and early 1973 the then Tariff Commission held hearings on a proposal by its staff for a possible new Valuation System which could be adopted as a uniform international standard. This Tariff Commission staff proposed would have put the United States on a slightly modified version of the Brussels Definition of Value.

The American Importers Association responded with a paper which in many ways was the father of the MTN Valuation Code. Its basic premise was that both the U.S. and the Brussels valuation system should be discarded and replaced by a new system based on "transaction value." That is just what has now emerged from the Geneva negotiations.

U.S. law should be amended to give full effect to the new Valuation Code which is based on transaction value, and rigidly prescribes the manner and extent which Customs authorities may deviate from this standard.

In order to avoid unnecessary repetition, AIA will not, in this statement offer specific statutory language. Rather, we endorse and adopt the testimony of Mr. Saul Sherman, who will appear later in these hearings on behalf of the Joint Industry Group of which AIA is a member. Mr. Sherman's testimony will deal extensively with this subject.

IV. CONCLUSION

In conclusion, Mr. Chairman, AIA wishes to reiterate its concern over the price consumers and importers apparently are being asked to pay, in the form of one protectionist concession after another, to secure implementation of the reportedly liberalizing MTN package. We urge the Committee and the Congress to reject attempts to buy this package with quotas or other protectionist devices. To this end, we urge the Committee to enact only the legislation necessary to implement the package, not the widely-rumored "appropriate sweeteners".

We appreciate this opportunity to express our views. We look forward to working with you and your staff in the coming weeks in what we hope will be an effective dialogue "to promote the development of an open, nondiscriminatory, and fair world economic system".

Senator RIBICOFF. Mr. Robert Best.

STATEMENT OF ROBERT A. BEST, EXECUTIVE VICE PRESIDENT, AMERICAN LEAGUE FOR EXPORTS AND SECURITY ASSISTANCE

Mr. BEST. Thank you, Mr. Chairman. It is good to be back.

Mr. Chairman, members of the subcommittee, you and your able staff deserve a lot of credit for holding this hearing and raising a number of issues relating to the various draft MTN codes that have been circulating in this town for the past month. To some it might seem premature to hold this kind of hearing before the negotiations are formally complete and the agreement formally submitted to Congress. But I believe this is most appropriate because the codes themselves are subject to so many interpretations it is difficult for anybody to make a fair judgment on exactly what they mean or how they will be implemented by the various signatories. This is not intended to be a criticism of the agreements or of Bob Strauss but merely a view that negotiated agreements tend to be ambiguous and require interpretations for appropriate implementing legislation.

Before discussing the matters raised in the subcommittee's press release I might say a word about the American League for Exports and Security Assistance (ALESA). Founded in 1977, ALESA is a unique labor-management organization whose fundamental purpose is to encourage "jobs through export" trade and tax programs. We currently have 34 corporate members who export over $20 billion in manufactured products and employ over 800,000 Americans in all 50 States and four international unions representing over 4 million American workers. With a positive export policy as its primary purpose in life, obviously ALESA has a great interest in the MTN agreements.

I will confine my comments to a few areas raised in the press release of February 8 and then provide some related thoughts on current Government organization and direction in administering U.S. trade policy.

SUBSIDIES—COUNTERVAILING DUTY CODE

First, with regard to the subsidies/countervailing duty code, there are still ambiguities as to which subsidies are legal and which are not. Clearly indirect tax rebates, such as value added—are legal but direct tax rebates (and deferrals) presumably are not. Yet we understand that the DISC will remain as it is (some even say it's not illegal under the new code). The decisions of a lot of business organizations to support or oppose the package depends on a clear understanding of that issue.

I strongly believe that in the face of a $40 billion trade deficit (cif basis) it would be folly for the United States to eliminate DISC; particularly since I can't really see precisely what the Europeans and Japanese are going to give up in the subsidies/cvd code—not border tax rebates, not agricultural restitution payments, not the direct subsidies that the GATT arbitration panel found to be illegal. I would strongly urge this subcommittee to make it clear in the legislative history of the agreement that Congress does not intend to eliminate DISC until a better substitute is found. Perhaps the staff can develop a better substitute for your consideration in this Congress. Why don't we go to school on the Europeans and Japanese and adopt some of their own tax practices which encourage exports and discourage imports?

I do not want to take the committee's time in trying to evaluate the definitions of "injury," "industry," or some of the other issues raised in the press release. Your staff knows that I am available to go into these matters in whatever detail they desire.

ADMINISTRATION OF TRADE POLICY

Other questions in your press release relate to which agency should administer the codes and trade laws that will result from these agreements if approved by Congress. This raises the broader question of whether we need a Department of Trade as suggested in the Ribicoff-Roth bill (S. 377). Although it is clear that any department or agency of the executive tends to have as much influence on executive decisions as the department head has with the White House or key congressional committees, and therefore simply creating another department will not solve a problem, we have come to the conclusion that if the mandate and statutory functions of the Department of Trade and Investment were clearly spelled out and provided for a positive and coherent trade policy, it would be very helpful to consolidate the current helter-skelter trade apparatus that spans 57 agencies of Government into a cohesive unit. We therefore support S. 377 with the suggestion that the department be given a clear export orientation in its purpose and statutory functions.

In doing some preparatory reading for this hearing, I came across a report by Senator Abraham Ribicoff on "A Strategy for International Trade Negotiations" published on February 9, 1973. Your findings and recommendations in that report are as valid today as they were 6 years ago.

Among your findings were:

> * * * that the United States institutionally is ill prepared to deal with long-range trade policy.
>
> * * * the issues still remain fragmented among a host of bureaucracies.
>
> Foreign officials noted that there was no single source in Washington to whom they could turn for an authoritative description of the American position on trade matters.[1]

At that time you gave the following recommendation for executive reorganization:

> The disparate policy strongholds in economic policy in the executive branch must be brought together under a coherent management structure. This must be done openly so that everyone knows where to go for answers. * * * After this is done, coordinated policies must be implemented throughout our Government so that everyone in an official capacity gets the word. It is not a matter of making trade policy under new headings, but moving trade up to the level of other considerations. Anything less than such an effort will be harmful to our most vital economic political and security interests.[2]

Mr. Chairman, we could not say it any better. If a coherent trade policy apparatus was important 6 years ago, it is critical today with the dramatic changes in the world political and economic structures and alliances.

We cannot emphasize the importance of defining a coherent trade and commercial policy for the United States. That policy must be based on realistic views on the world marketplace and the current U.S. position in that market. Among the current realities are:

The existence of cartel-dictated energy prices for the foreseeable future;

Aggressive exporting policies of other oil consuming nations with considerable Government-industry cooperation.

An inability on the part of the United States to dictate the internal policies of other sovereign nations, large or small, be they commercial, political, military, environmental, or with regard to human rights.

The folly of trying to use export restraints unilaterally to force other buying nations to adopt our concepts and standards when other sellers (e.g. Germany, Japan) are willing to sell technologically equal equipment without regard to the buyer's internal policies.

---

[1] "A Strategy for International Trade Negotiations," report by Senator Abraham Ribicoff to the Committee on Finance, Feb. 9, 1973, p. 5.
[2] Ibid., p. 14.

Unless we face these realities squarely and adopt realistic policies, the creation of a new Department will not begin to resolve our trade problems.

I don't think we made any mistake in creating a Department of Energy. Our failure was we never articulated a national energy policy which defined clearly the problem and rallied the American people and the Congress around a solution.

A President should never declare war on something or somebody unless and until he is able and willing to muster the forces and the strategy to win the war.

NEED FOR A POSITIVE NATIONAL EXPORT POLICY

Third, while we are generally supportive of the agreements as we understand them, and feel that Bob Strauss, Dick Rivers, and all deserve a lot of credit on a difficult assignment, we would be less than candid with you if we suggested those agreements are going to resolve the U.S. trade problem. The $39.6 billion (cif) deficit suffered by the United States last year was no accident. We believe the deficit is long term and structural.

Mr. Chairman, I ask that the remainder of my statement be incorporated into the record as if read.[1]

Senator RIBICOFF. Without objection.

Thank you very much for your excellent testimony.

Senator Danforth?

Senator DANFORTH. I could not agree more. I think the points that you have made are good ones. It seems to me that this is going to be the year of trade in the Congress and that we therefore have the opportunity to really do some meaningful things not necessarily to erase the trade deficit but at least to be more competitive than we are now and that along with the implementing legislation we should consider what else we can do in order to improve our situation with respect to exports.

Basically, we have a kind of philosophical question that is before the country: Do we believe that the time has come, as a country, to crawl into our own shell? Do we believe we are no longer competitive, and therefore we should give up on being competitive? Or, in the alternative, do we think that we have an opportunity to expand our economy and to expand opportunities for the American people by doing a couple of things. One, by protecting ourselves from unfair trade practices by other countries which have dumped their products in our markets, really, without serious action, I think, on our part.

And two, can we develop an export strategy? I think there is a tremendous audience in the Congress for doing something to develop an export strategy. There was a meeting a couple of months ago in which Ambassador Strauss was present and one or two Members of Congress and, during the discussion, someone raised the question, how can we develop a national export strategy, what can we do to increase our exports?

It was electrifying. The meeting was brought to life, and we started talking in those terms.

[1] The full prepared statement of Mr. Best may be found on p. 50.

Something is wrong with our ability to export. When 80 percent of our nonagricultural exports are accounted for by 1 percent of our manufacturing companies, something is very wrong.

When I talk to people from my State who say that there is no interest in exporting here, or people are afraid of exporting, or when Ambassador Strauss says most American businessmen do not know how to sell in Japan, then something is seriously wrong and my feeling is that in connection with the implementing legislation now that we have gotten the attention of the Congress on the matter of trade, let us see what else we can do. Let us see what we can do to increase our exports.

Now, you have to do it within the terms of GATT. You cannot subsidize people for exports, so I am not sure exactly what a legislative package should have in it.

Most people, when you talk to business people, they say, No. 1, do not repeal DISC, just as you have said DISC is not going to be repealed. All right. Let us move on to step two.

The Department of Trade, fine, that is all right, but it just seems to me, not waiting for some other year, but this is the year to start thinking in terms of what kind of legislation, what sort of legislative package we can put together in order to encourage American business people to do a better job selling abroad.

And if you have any ideas either this morning or, you know, in the near future on this subject I would be most happy to hear from you.

Mr. BEST. Yes. I fully agree with you, Senator. I think there are perhaps three or four areas that the Congress ought to consider. The Congress has passed a lot of laws with very noble ends, but which unfortunately have a serious anticompetitive effect in the marketplace. Rather than trying to repeal each and every one of those laws, be they environmental impact statements on Exim Bank loans naming human rights sinners, certain types of other self-imposed export barriers, I think—you could have a declaration of policy and congressional findings and a notwithstanding phrase that would, in effect, give exports a priority over other considerations and direct each agency of Government in its rulemaking to make that clear.

This approach would not eliminate these laws or denigrate human rights or bribery or boycott or whatever noble objectives we have, but it would put them in the perspective of the need for a positive export policy. That is one area that I think the legislation should consider.

Second, I think you can come up with tax incentives which do not violate the GATT subsidy agreement which would encourage research and development because that is what determines ultimately what your competitive position is going to be.

I do not think our tax laws at the present time tend to encourage R. & D. sufficiently and I have made some suggestions for improvement in my testimony.

Finally, I would say along with the Department of Trade, our credit programs through the Exim Bank must be fully competitive with those of Germany and Japan. At the present time, they are not.

Senator DANFORTH. The people that I talk to about this question, I would say that the one common point that is made by almost everybody is R. & D. and you have made it again. Apparently—and I think it can be shown statistically—that there is a relationship between spending for R. & D. and exports. As we have always thought, the thing we are trying to export is our knowhow and now we find that other countries are catching up with us.

As a matter of fact, the percentage of our gross national product which we are spending on R. & D. in the last decade or more has been, I think, very flat—maybe even declining. So maybe one of the things we should be considering—I have not had the opportunity to read your testimony, but some sort of strategy tax program with respect to research and development. What can we do to encourage Americans to invest more in R. & D.

In your view, assuming that such a program would yield results, assuming that it was well thought-out and it was, in fact, more investment and R. & D., would that——

Mr. BEST. It would pay off enormously. The areas we are highly competitive in—and those happen to be the companies I represent—in the aerospace and computer field and heavy equipment—are all areas in which there has been a lot of R. & D. In areas where we are not competitive—consumer durables, for example, are industry has not competed well against the Japanese who devote a lot of resources in the R. & D. area. I think I will be disputed by the Zenith Chairman when he comes up, but I have seen Japanese factories and they appeared to me to be way ahead of us in the R. & D. effort that they were making in relation to each sales dollar.

Senator DANFORTH. Do you have any sense as to whether the problem is not basic research or applied research or both?

Mr. BEST. I really could not tell you. I think it is in both.

Senator DANFORTH. Thank you.

Senator RIBICOFF. Senator Long?

Senator LONG. Thank you very much for your statement, Mr. Best. I do not think we can do justice to the things I would like to develop at this point, so I will talk to you later on about them. Thank you very much.

Senator RIBICOFF. Thank you very much for your valuable testimony.

[The prepared statement of Mr. Best follows:]

STATEMENT OF ROBERT A. BEST, EXECUTIVE VICE PRESIDENT, AMERICAN LEAGUE FOR EXPORTS AND SECURITY ASSISTANCE, INC. (ALESA)

Mr. Chairman, members of the subcommittee, you and your able staff deserve a lot of credit for holding this hearing and raising a number of issues relating to the various draft MTN codes that have been circulating in this town for the past month. To some it might seem premature to hold this kind of hearing before the negotiations are formally complete and the agreement(s) formally submitted to Congress. But I believe this is most appropriate because the codes themselves are subject to so many interpretations it is difficult for anybody to make a fair judgment on exactly what they mean or how they will be implemented by the various signatories. This is not intended to be a criticism of the agreements or of Bob Strauss but merely a view that negotiated agreements tend to be ambiguous and require interpretations for appropriate implementing legislation.

Before discussing the matters raised in the subcommittee's press release of February 8 I might say a word about the American League for Exports and Security Assistance (ALESA). Founded in 1977, ALESA is a unique labor-management organization whose fundamental purpose is to encourage "jobs through export" trade and tax programs. We currently have 84 corporate members who export over $20 billion in manufactured products and employ over

800,000 Americans in all 50 States and four international unions representing over 4 million American workers. With a positive export policy as its primary purpose in life, obviously ALESA has a great interest in the MTN agreements.

I will confine my comments to a few areas raised in the press release of February 8 and then provide some related thoughts on current government organization and direction in administering U.S. trade policy.

SUBSIDIES—COUNTERVAILING DUTY CODE

First, with regard to the subsidies/countervailing duty code, there are still ambiguities as to which subsidies are legal and which are not. Clearly indirect tax rebates, such as value added—are legal but direct tax rebates (and deferrals) presumably are not. Yet we understand that the DISC will remain as it is (some even say it's not illegal under the new code). The decisions of a lot of business organizations to support or oppose the package depends on a clear understanding of that issue.

I strongly believe that in the face of a $40 billion trade deficit (cif basis) it would be folly for the United States to eliminate DISC; particularly since I can't really see precisely what the Europeans and Japanese are going to give up in the subsidies/cvd code—not border tax rebates, not agricultural restitution payments, not the direct subsidies that the GATT arbitration panel found to be illegal. I would strongly urge this Subcommittee to make it clear in the legislative history of the agreement that Congress does not intend to eliminate DISC until a better substitute is found. Perhaps the staff can develop a better substitute for your consideration in this Congress. Why don't we go to school on the Europeans and Japanese and adopt some of their own tax practices which encourage exports and discourage imports?

I do not want to take the Committee's time in trying to evaluate the definitions of "injury", "industry", or some of the other issues raised in the press release. Your staff knows that I am available to go into these matters in whatever detail they desire.

ADMINISTRATION OF TRADE POLICY

Other questions in your press release relate to which agency should administer the codes and trade laws that will result from these agreements if approved by Congress. This raises the broader question of whether we need a Department of Trade as suggested in the Ribicoff-Roth bill (S. 377). Although it is clear that any department or agency of the Executive tends to have as much influence on Executive decisions as the Department head has with the White House or key Congressional Committees, (and therefore simply creating another Department will not solve a problem), we have come to the conclusion that if the mandate and statutory functions of the Department of Trade and Investment were clearly spelled out and provided for a positive and coherent trade policy, it would be very helpful to consolidate the current helter-skelter trade apparatus that spans 57 agencies of government into a cohesive unit. We therefore support S. 377 with the suggestion that the Department be given a clear export orientation in its purpose and statutory functions.

In doing some preparatory reading for this hearing, I came across a report by Senator Abraham Ribicoff on "A Strategy for International Trade Negotiations" published on February 9, 1973. Your findings and recommendations in that report are as valid today as they were six years ago.

Among your findings were:

"* * * that the United States institutionally is ill prepared to deal with long-range trade policy.

"* * * the issues still remain fragmented among a host of bureaucracies.

"Foreign officials noted that there was no single source in Washington to whom they could turn for an authoritative description of the American position on trade matters."[1]

At that time you gave the following recommendation for executive reorganization:

"The disparate policy strongholds in economic policy in the Executive Branch must be brought together under a coherent management structure. This must be done openly so that everyone knows where to go for answers * * *. After this is done, coordinated policies must be implemented throughout our government

---

[1] "A Strategy for International Trade Negotiations", Report by Senator Abraham Ribicoff to the Committee on Finance, Feb. 9, 1973, p. 5.

so that everyone in an official capacity gets the word. It is not a matter of making trade policy under new headings, but moving trade up to the level of other considerations. Anything less that such an effort will be harmful to our most vital economic, political, and security interests."[3]

Mr. Chairman, we could not say it any better. If a coherent trade policy apparatus was important six years ago, it is critical today with the dramatic changes in the world political and economic structures and alliances.

We cannot emphasize the importance of defining a coherent trade and commercial policy for the United States. That policy must be based on realistic views on the world marketplace and the current U.S. position in that market. Among the current realities are:

The existence of cartel-dictated energy prices for the foreseeable future.

Aggressive exporting policies of other oil consuming nations with considerable government-industry cooperation.

An inability on the part of the United States to dictate the internal policies of other sovereign nations, large or small, be they commercial, political, military, environmental, or with regard to human rights.

The folly of trying to use export restraints unilaterally to force other buying nations to adopt our concepts and standards when other sellers (e.g. Germany, Japan) are willing to sell technologically-equal equipment without regard to the buyer's internal policies.

Unless we face these realities squarely and adopt realistic policies, the creation of a new Department will not begin to resolve our trade problems.

I don't think we made any mistake in creating a Department of Energy. Our failure was we never articulated a national energy policy which defined clearly the problem and rallied the American people and the Congress around a solution.

A President should never declare war on something or somebody unless and until he is able and willing to muster the forces and the strategy to win the war.

NEED FOR A POSITIVE NATIONAL EXPORT POLICY

Third, while we are generally supportive of the agreements as we currently understand them, and feel that Bob Strauss. Dick Rivers, and all deserve a lot of credit on a difficult assignment, we would be less than candid with you if we suggested those agreements are going to resolve the U.S. trade problem. The $39.6 billion (cif) deficit suffered by the U.S. last year was no accident. We believe the deficit is long term and structural.

Its causes relate not only to the oil cartel and the enormous drain that OPEC causes on oil importing nations but to the attitudes of our nation toward meeting competition head on in the marketplace.

The United States is the only major industrialized country without a positive export policy. The U.S. Government (both the Legislative and Executive Branches) has not encouraged, but rather has discouraged, often unwittingly, U.S. companies located in the United States from exporting. As a consequence of the anti-export animus, unconscious though it may be, American business is losing out in the battle for markets.

Our share of world exports is declining steadily, while that of our major competitors—Japan and Germany—rises. Even developing countries like Brazil are winning contracts that previously would have gone to U.S. firms.

Every piece of legislation Congress passes is viewed from many viewpoints: revenue, budget, tax impact, human rights, environmental, health and safety, consumer, discrimination. Very few times is consideration given to the effect of legislation on the international competitive position of America and hence on jobs and business activity at home.

The Executive Branch does not seem serious about a positive export policy despite official pronouncements to the contrary. Unilateral export restraint has been attempted in every area including: (1) requiring "environmental impact statements" on Eximbank loans; and (2) punishing human rights violators by stopping our exports (not our imports from these countries); incredibly complicated, overlapping and time-consuming licensing procedures.

The United States is suffering from a bout with "unilateralism". We are attempting to unilaterally enforce on others our standards and concepts of morality, which however appealing they may be to us, may not be universally and widely acclaimed or accepted by others. We fail to recognize that we can no

[3] Ibid., p. 14.

longer impose our views on these subjects on others, and that we often only punish ourselves by denying our industries the ability to compete, while not denying the buyer the product or technology it seeks.

Our leaders facilely blame the "oil import bill" as the cause of our trade imbalance but they fail to mention that Germany, Switzerland, Japan and many others who do not have the indigenous energy supplies that we have and must import more oil in relation to their economies than we do, have overcome their problem and have a positive balance of trade. How? By being bold, aggressive exporters.

Our trading partners do not engage in self-pitying wishful thinking about their trade problems. West Germany, which has no significant oil of its own and even must import large quantities of coal, had an overall surplus in trade of over $20.3 billion (cif) and a surplus with members of OPEC of $800 million. Japan, which also must import virtually all of its energy, had a $18.3 billion (cif) trade surplus. However, the United States, which still has over 50 percent of its energy produced at home, had a trade deficit of nearly $40 billion (cif).

How long will it take the United States to wake up?

There are some who believe a deficit is a good, healthy thing, that it contributes to international economic stability and gives our friends in the developing world some purchasing power. Others feel the depreciation of the dollar will make our exports more competitive and our imports less so, resulting in an automatic return to equilibrium. Both theories are fallacious.

First, our deficits end up as surpluses of OPEC, and major industrialized countries like Germany and Japan. We are not sharing our wealth with the poor.

Second, exchange rates have not proven to be automatic adjustment factors because of the actual nature of trade transactions and the perverse affect of a dollar depreciation on domestic inflation and hence exports.

ELEMENTS OF A NATIONAL EXPORT POLICY

Assistant Secretary of Commerce Frank Weil provided some of the essential ingredients of a National Export Policy in a speech of the Chicago World Trade Conference on April 5, 1978. Among these ingredients were:

Appropriate tax incentives to encourage exports;

A revitalized export financing program;

A computerized information system identifying potential foreign buyers to potential suppliers, and other export development activities;

Amendment of our anti-trust laws where they impair our ability to compete against industrial conglomerates abroad;

A reexamination of government regulations and policies (including environmental and safety regulations, policies on transportation, investment, unilateral ceilings, licensing procedures and export controls) that interfere with American exports.

I would hope the people who advise the President will understand that these are among the broad areas where changes can and must be made so as to remove the competitive disadvantage of American firms and encourage U.S. exports.

In reviewing the competitive position of the United States it is clear that within the industrial sectors of our economy, our greatest strength lies in the high technology sector, where R&D effort is the greatest and where advances in science and engineering give American firms an ability to compete anywhere if the rules of competition are fair.

The charts and tables attached attempt to give some indication of the role of technology in job creation and export performance. Our competitors tend to devote more effort to civilian R&D programs than we do and consequently have become more efficient producers in many areas (particularly consumer durables) than we are. In areas where we spend considerable R&D effort (aircraft and computers for example) we are fully competitive but still lose sales because of the non-economic factors I have already mentioned.

TAXATION

The United States ought to be reviewing tax measures to encourage increased R&D effort by industry. Numerous studies have documented that those industries with strong R&D efforts remain competitive, while those with weak efforts lose out at home as well as abroad. Special depreciation rules, or tying a lower corporate tax rate or special investment credit to the R&D effort should be seriously considered.

FINANCING

Certainly, a revitalized Eximbank is critical to any positive export policy. Last year the Adminstration recommended and Congress approved an expansion of the Bank's lending authority to $40 billion (from $25 billion) as well as a five-year extension of its Charter. But this year the Administration set an overall budget ceiling of $4.1 billion and has even required environmental impact statements when the law does not so require. If we are serious about exports, we need an aggressive Eximbank unincumbered by extraneous non-economic issues.

REGULATIONS

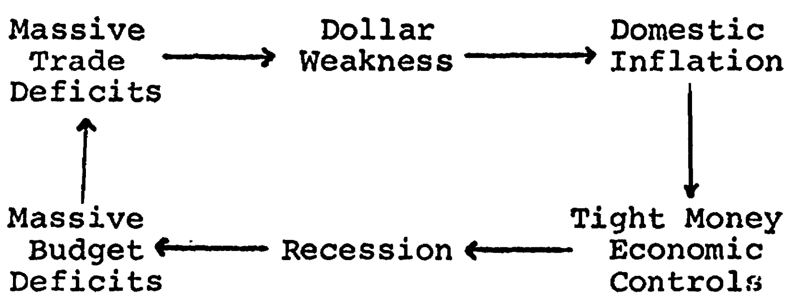
Licensing.—The Federal government has a bureaucratic agony tree of licensing procedures. First of all, there is a munitions list, established in 1948 and not revised regularly. If a U.S. Corporation wishes to sell anything on the munitions list (including construction equipment, spare parts, even services), it must go through a veritable agony tree to gain approval. No central control system exists; no time frames for decisions. The current system invites delay and frustration. It also invites bureaucratic abuses since corporations are put in the position of having to curry favors with bureaucrats to win their support.

If the project does not fall within the FMS channel, a company often must apply for a commercial license from the Commerce Department. Here again, delay and frustration are evidenced because of a lack of definition and time frames for decision. Now we are getting to the point where if any export is considered to have political implications, it must be stopped. This is incredible. If we, as a nation, are going to restrict our business only to countries whose internal policies we agree with, we will be dealing only with ourselves. Curiously, we never consider embargoing imports from offending countries, only exports.[1] In other words we try to change their internal policies by denying our working people a job while buying, often at dumped prices, everything their suffering working people sell us. I don't know who is advising the President on these things but I would suggest they take a course in basic human psychology.

CONCLUSION

Mr. Chairman, I have brought up these issues for a reason: we firmly believe that the trade agreements package ought to be accompanied by complementary and parallel legislation to encourage U.S. exports.

Bob Strauss and company did a magnificent job in negotiating these complex codes and, as I indicated, we support their adoption. However to effectively change the disastrous and vicious cycle of:



A positive aggressive export policy is desperately needed for this nation; 1979 will be the year of trade. If the nation opts for a positive export incentives program it will make the trade agreements more meaningful. If we do not adopt a positive export program in conjunction with these trade agreements, we fear that after approval of the MTN, trade problems will persist and more drastic action will be necessary which could really tear the fabric of cooperation that has been built up in the MTN agreement negotiations.

Thank you Mr. Chairman.

---

[1] The only exception I am aware of is Uganda.

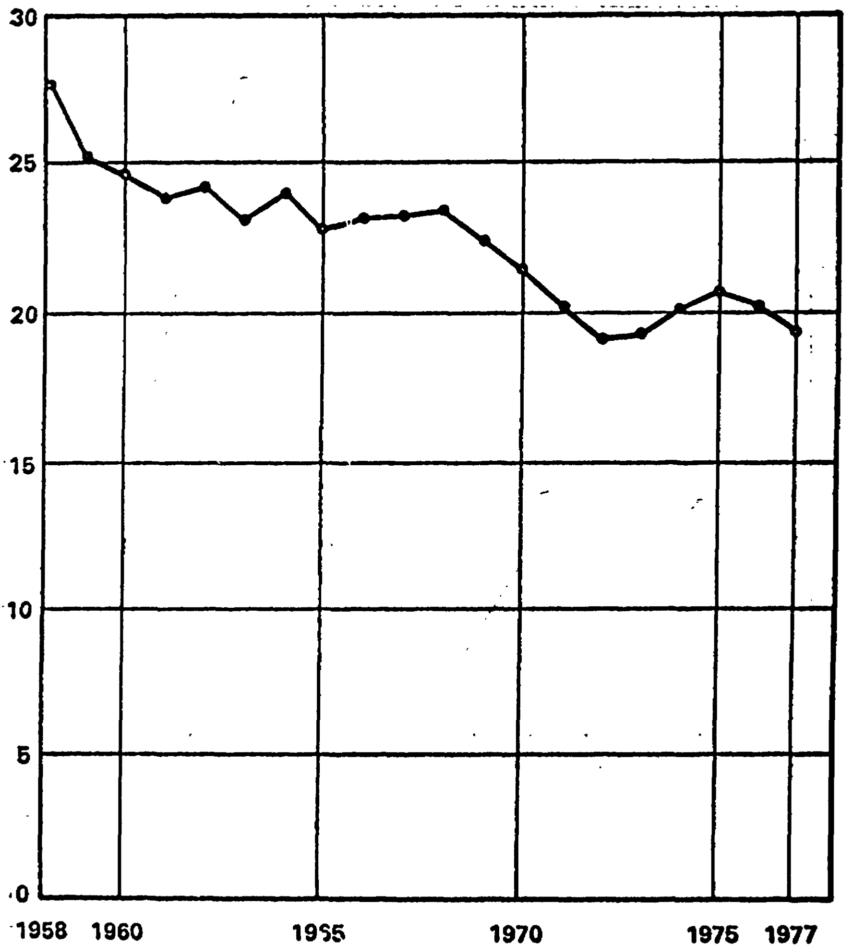
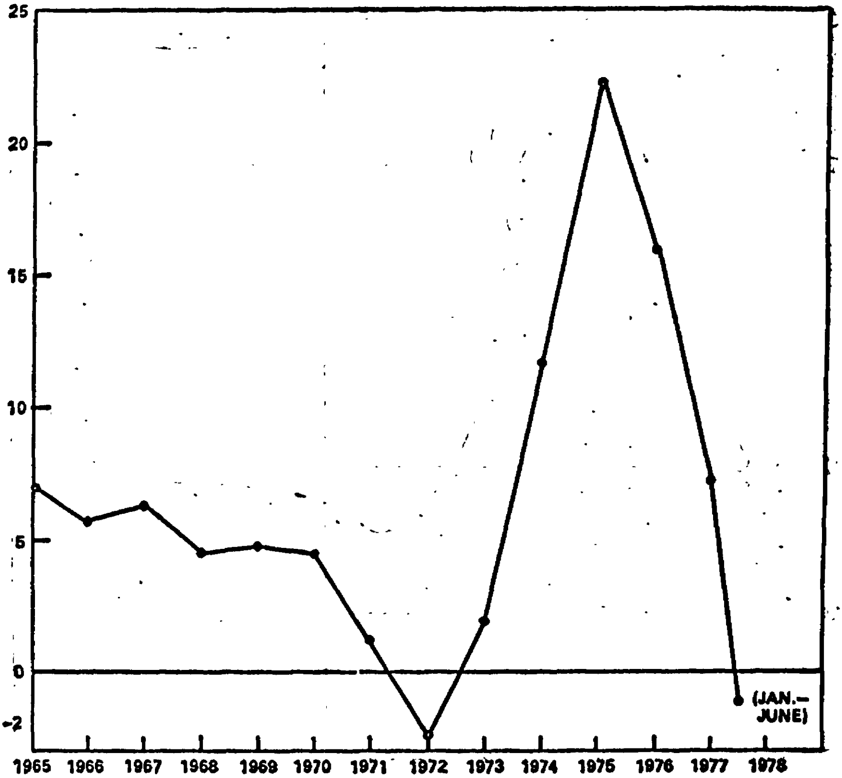
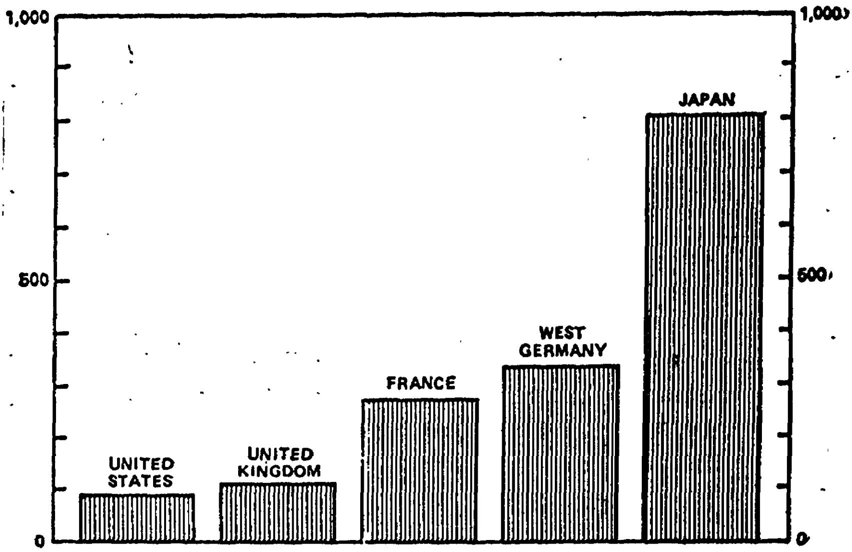


FIGURE 1.—U.S. share of world exports of manufactured goods, 1958–77, in percent.



SOURCE: 1965–76: INTERNATIONAL ECONOMIC REPORT OF THE PRESIDENT, JANUARY, 1977, p. 152. 1977–78: U.S DEPARTMENT OF COMMERCE, OFFICE OF INTERNATIONAL ECONOMIC RESEARCH.

FIGURE 2.—U.S. foreign trade in manufactured goods, 1965–78 (balance in billions of dollars).



SOURCE: "OUTPUT PER HOUR, HOURLY COMPENSATION, AND UNIT LABOR COSTS IN MANUFACTURING, ELEVEN COUNTRIES, 1950–77," BUREAU OF LABOR STATISTICS, U.S. DEPARTMENT OF LABOR, MAY 4, 1978.

FIGURE 3.—Output per hour in manufacturing (increase in percent, 1950–76).

TABLE 1.—DISTRIBUTION OF NATIONAL R. & D. EXPENDITURES IN SELECTED INDUSTRIALLY ADVANCED COUNTRIES AS A PERCENTAGE OF GNP, 1961, 1967, 1972, AND 1975

	1961	1967	1972	1975
United States	2.74	2.91	2.43	2.32
Canada	1.01	1.33	1.17	[1] 1.20
France	1.38	2.16	1.83	[1] 1.48
Japan	[1] 1.45	1.55	1.89	[1] 2.00
United Kingdom	2.69	2.69	2.39	[1] 2.25
West Germany	[1] 1.20	1.97	2.31	2.25

[1] Estimate.
Source: National Science Foundation. "Science Indicators 1976," p. 184, except estimates, as noted.

TABLE 2.—ESTIMATED R. & D. EXPENDITURES FOR CIVIL PURPOSES, 1975

[In billions of dollars]

	Canada	France	Japan	United Kingdom	West Germany	United States
1. GNP (dollars)	152	338	493	229	425	1,516
2. Percent R. & D.	1.2	1.48	2.0	2.25	2.25	2.32
3. R. & D. (dollars)	1.8	5.0	9.86	5.15	10.6	35.2
4. Percent R. & D. in space and national defense	5.4	26.2	1.7	24.5	8.1	34.4
5. Percent R. & D. in civilian programs	94.7	73.8	98.3	75.5	91.9	65.6
6. R. & D. in civilian programs (dollars)	1.7	3.7	9.7	3.9	9.7	23.1

Source: Row 1, "World Military and Social Expenditures 1978," pp. 21-22. Row 2, table 2. Row 3, product of rows 1 and 2. Row 4, National Science Foundation. "Science Indicators 1976," pp. 186-187. Row 5, 100 percent minus row 4. Row 6, product of rows 3 and 5.

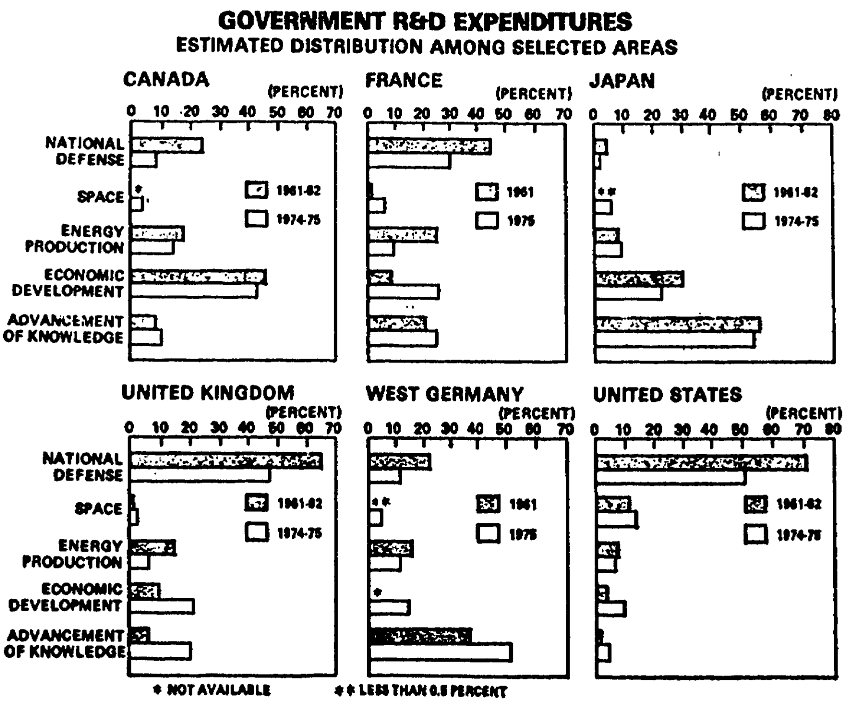


FIGURE 4

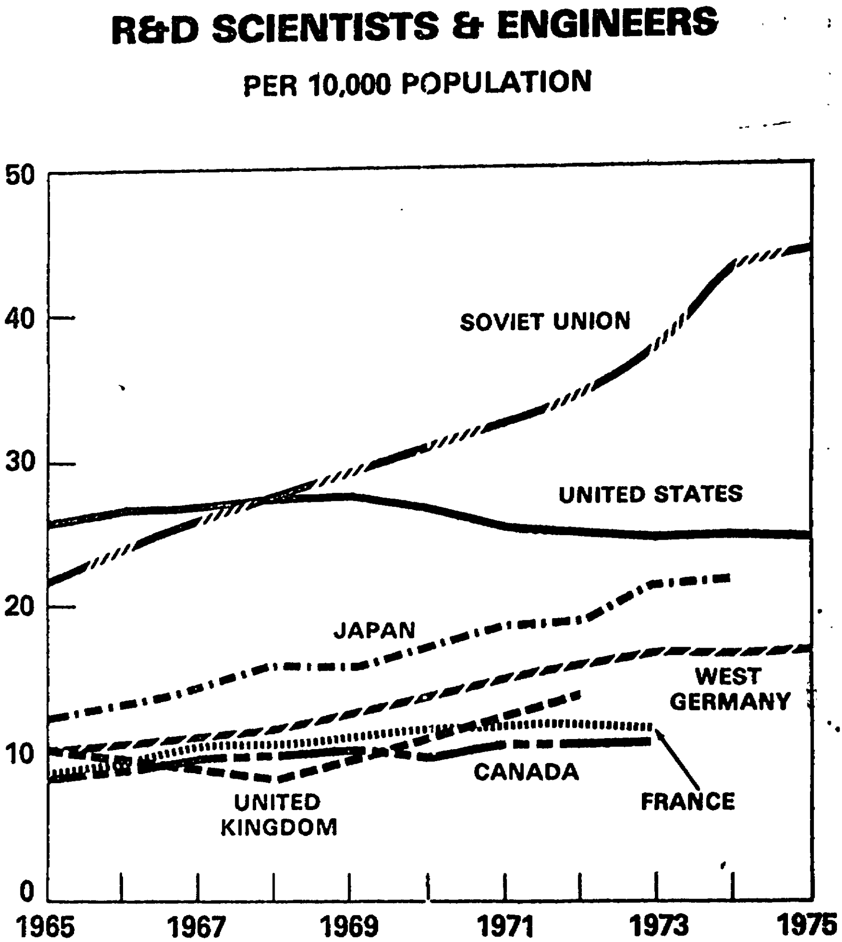


FIGURE 5

Senator RIBICOFF. Mr. John Nevin? Is Mr. John Nevin here? Mr. Noel Hemmendinger.

STATEMENT OF NOEL HEMMENDINGER ON BEHALF OF ARTER, HADDEN & HEMMENDINGER

Mr. HEMMENDINGER. Mr. Chairman and members of the subcommittee, I have to apologize that my full statement was not typed. There, perhaps, the committee benefits, because I have only a short summary.

Senator RIBICOFF. Mr. Hemmendinger, when your full statement is typed, it should be submitted and it will go into the record as if presented.

Mr. HEMMENDINGER. Thank you, sir.

My name is Noel Hemmendinger. I am the senior partner of the law firm of Arter, Hadden & Hemmendinger, better known to some of you over the years as Stitt, Hemmendinger & Kennedy. The purpose of my testimony is to offer the experience of our law firm over many years in representing U.S. importers and foreign exporters under the countervailing duty law, the Antidumping Act, and the escape clause.

I am speaking only for our law firm—that is to say, my partners. There may be some opinions which are those of myself only. Our clientele in the past year has included Brazilian, Colombian, Philippine, Thia and Malaysian interest under the countervailing duty law. It has included Japanese steel under the Antidumping Act and the TPM, cement and nails from Canada under the Antidumping Act. Under the escape clause, we have a continuing interest in the specialty steel case for Japan and a footwear problem, and we represented Yugoslav ferochromium. That is, as I say, just in the last year. We are registered under the Foreign Agents Act for a number of foreign clients. I have not brought a copy of our latest statement because I am not speaking for our clients. I am speaking for ourselves.

By and large, as regards the specific issues that were raised in the committee's notice, we agree with the Association of American Importers and we will have some specific comments in our own written statement. I come, however, chiefly to offer you what may be a somewhat unconventional view, that the Antidumping Act and the countervailing duty law are greatly overvalued in terms of the utility and the validity of the distinction between fair and unfair trade and the benefits of legal remedies which are based on what I sometimes call the slot machine approach. You put your money in at the top and get your result at the bottom.

In other words, it is a fallacy, I suggest, that you can carry out trade policy, which is what is involved in these laws, through automatic proceedings under law. There are large elements of discretion which are inherent in these matters and they must be preserved and valued.

I suggest that the experience in textiles, automobiles, steel and television alone indicates that the Antidumping Act, for instance, is not an effective instrument of U.S. trade policy. We have had to go outside these laws governing unfair trade to deal with important and real trade problems. The problem with them is that they do not take into account that differential pricing is a perfectly appropriate and normal business method and that practically all trade in the world today is, and has been, conditioned by governmental interventions of one kind or another.

These premises lead me to the following major conclusions. First, that these issues should be considered as controversies between economic blocs and, in some cases, between governments and their resolution, like other controversies, should be facilitated by every means possible.

Also, that the decisions, when the statutory procedures have been followed, should be subject to final executive discretion in the national interest and not handled as private controversies. This is particularly important in the case of the developing countries.

The second major conclusion is that the real test is the test of the escape clause, namely injury. That should be the primary consideration, examining whether measures ought to be taken against imports from any particular source, not the so-called fairness of those imports. That means that the material injury test, which we should have had in our laws all these years, should be effectuated and made significant.

A corollary is that there is a built-in bias in the administration of the Antidumping Act. I regret to say that I testified to this effect in 1974 with respect to the circumstances of sale and the comparison of average home market prices with each export transaction, but these abuses continue with no end in sight.

Thank you, Mr. Chairman.

Senator RIBICOFF. Thank you very much, and we do look forward to your complete statement, Mr. Hemmendinger.

Senator Danforth?

Senator DANFORTH. No questions.

Senator RIBICOFF. Senator Long?

Senator LONG. No questions.

Senator RIBICOFF. Thank you very much, sir.

[The prepared statement of Mr. Hemmendinger follows:]

STATEMENT OF NOEL HEMMENDINGER ON BEHALF OF THE LAW FIRM, ARTER HADDEN & HEMMENDINGER

I am senior partner of the Washington, D.C. law firm, of Arter Hadden & Hemmendinger. The Washington firm is successor to the firm of Stitt, Hemmendinger & Kennedy, whose members have often appeared before committees of the Congress concerned with trade issues. It is associated with firms in Cleveland and Columbus, Ohio.

The purpose of our testimony is to offer to the Subcommittee the views of members of the firm, based on many years of experience in representing U.S. importers and foreign exporters in proceedings under the Escape Clause, the Antidumping Act, and the Countervailing Duty Law. During the past year, we have represented importers and exporters in connection with countervailing duty cases involving textiles and men's and boys' apparel from Brazil, Colombia, the Philippines, Thailand, and Malaysia; in connection with the TPM system as it concerns steel from Japan; with dumping cases involving steel and wire products and motorcycles from Japan; nails and cement from Canada; and in connection with escape clause matters involving specialty steel from Japan, footwear from various sources, and ferrochromium from Yugoslavia.

This testimony is given on behalf of the law firm, and not on behalf of its clients.[1]

GENERAL OBSERVATIONS

In general, we concur with the presentation made on behalf of the American Importers Association, (AIA). We are a member of the AIA and participate in the work of a number of its committees. We offer specific comments of our own on some of the issues raised by the Subcommittee's notice, and I make some observations from a somewhat different perspective than most of the witnesses you will be hearing.

I submit that the distinction between "fair" and "unfair" trade and the benefits of remedies based on that distinction are greatly overrated.

We perceive the Countervailing Duty Law and the Antidumping Act as largely irrational in conception, capricious in execution, harassing of the import trade, and as cumbersome and ineffectual instruments for conducting U.S. trade policy. This is witnessed by the experience with textiles, automobiles, steel, and televisions.

These laws deal with two somewhat related practices, which are characterized as unfair—subsidization and selling for export at prices below the homet market price, or at prices which do not cover full costs. We would not discard these concepts and the international codes which have been worked out embodying them. They have their utility. We would, however, urge the recognition of major

[1] The law firm is registered under the Foreign Agents' Registration Act for a number of clients. A copy of its latest registration statement is not being tendefed to this Subcommittee because the testimony is not being given for or in the interest of our clients.

qualifications: first, that "unfairness" is a complex and difficult concept in international trade because all trade is conditioned by either current or historical government interventions of one character or another, and because, as regards dumping, differential pricing in international markets is often pro-competitive; and second, that a automatic remedy through legal proceedings based upon rigorous legal standards is not appropriate to the resolution of international economic issues such as are involved in trade among nations. This is especially true of the Countervailing Duty Law since it questions the political judgment of foreign governments adoped out of their conviction of what is necessary in their sovereign interests.

The attempt to resolve these issues through meticulous investigations under legal standards is inevitably time-consuming and sometimes beyond the capability of the staffs that can be assigned to do the job. This implies that the dissatisfaction which members of the Congress have frequently expressed with the execution of these laws lies more in the inherent impossibility of the task assigned than in the great burdens and administrative problems encountered by the staffs who have been seeking to accomplish the tasks.

It follows from these propositions that there should in all cases be a balancing of the various interests involved in determining what remedies, if any, are to be taken when unfair practices are found, rather than an automatic remedy; and, that strong encouragement should be given to negotiated solutions. In the long run, there should probably be a single type of proceeding for remedies against imports, with the President making the final decision. (See in this connection my testimony before the Senate Finance Committee in 1974, Hearings before the Committee on Finance, United States Senate, 93rd Congress, 2nd Session, on H.R. 10710, P. 1929.)

Comments on the specific issues raised by the Subcommittee's Notice follow. Numbers are keyed to the Notice.

Countervailing Duty

1. *Administering agency.*—The importance of the agency should not be exaggerated. No matter to what agency these tasks are assigned, they will have to be done by civil servants much like those who accomplish them at present. More logical structure can perhaps be achieved, but whether it is worth the price of the disruption of established procedures is questionable.

2. *Definition of injury.*—The United States has been justly critized for not including a test of injury in the Countervailing Duty Law, as provided by the GATT. Notwithstanding GATT's so-called Grandfather Clause, in our view the United States has had an obligation as years have passed to include an injury test in the law. Moreover it is not rational to deny U.S. purchasers the lowest prices if there is no significant injury to U.S. producers.

The United States has also been justly criticized because the test of injury under the Antidumping Act and for duty-free goods under the Countervailing Duty law has not been equal to the test of "material injury", as provided in the GATT. The U.S. representatives' defense to this criticism has been to claim that in practice the determinations in the ITC have been consistent with "material injury" in the GATT. Given the multiplicity of factual situations, and the variety of decisions by six commissoners who have not always explained their reasoning, it is impossible to reach such a neat conclusion. It is necessary to say that there are decisions and reasoning by some Commissioners that are not consistent with the GATT standard of material injury. It is extremely important, we submit, that in implementing the International Subsidies Arrangement the Congress make clear that a significant level of injury is intended. The standard might be less, to be sure, than serious injury under Section 201 of the Trade Act of 1974 and Section XIX of the GATT, but it should be considerably more than de minimis.

An important mission of the U.S. Government officials concerned is to bring as many of the developing nations as possible into the International Subsidies Arrangement. It is of the utmost importance that the injury test be visibly significant, if this is to be accomplished.

3. *Definition of like product.*—We suggest that the definition in the Countervailing Duty Law should follow the Code. The expression "like or similar" is satisfactory statutory language for footnote 3 to Article I F; i.e., "although not alike in all respects, has characteristics closely resembling those of the product under consideration."

4. *Duties should be smaller than the amount of subsidy*, if this will be adequate to remedy the injury. The case may not often arise where this can be so

neatly quantified, but where it is possible, the principle seems clearly sound.

5. *Termination of investigation.*—We believe that such provisions are the most important, for reasons suggested above, that can be adopted. A countervailing duty case is essentially a controversy between the United States and a foreign government with respect to measures which the foreign government has considered to be necessary and appropriate in the interests of its own economy. Such a challenge to measures of a friendly foreign sovereign should not lightly be made, and when made should be terminable upon whatever reasonable accommodation is possible.

These are problems of international diplomacy and should be resolved through consultation and agreement rather than the mandatory imposition of legal or administrative remedies. Termination of the subsidy itself would not normally involve a question of settlement, because if the subsidy is eliminated in whole or in part, then the countervailing duty is automatically eliminated in similar proportion. However, where there are outstanding arrangements such as quotas, they should be taken fully into account. It should be a normal principle that countervailing duty will not be applied where other measures adequate to protect the U.S. industry are in effect, whether unilateral by the exporting country, bilateral, or unilateral on the part of the United States.

6. *Judicial review.*—There is no reason for legislation to alter the present standard of judicial review, which is that the discretionary determinations of the Executive and the ITC are accorded large respect. It is an established principle of judicial review of administrative actions that the judgment of the agencies involved in evaluating technical evidence will not be disturbed unless there is failure to follow the rules or an obvious disregard of the evidence.

Antidumping Duties

1. *Administering agency.*—The comments above with respect to the Countervailing Duty are applicable.

2. *Relation to countervailing duty concepts.*—In the absence of any compelling reason to the contrary, we believe that it is desirable that the tests for injury, causation and the regional industry concept be the same under the two laws.

3. *Additional comments.*—We would apply in the Antidumping field the concepts that we have discussed above with respect to settlement of controversies over subsidies. Under present law, the Treasury can and should provide considerably more leeway to settle dumping cases by accepting assurances. The public interest in avoiding settlements designed to fix prices can be protected by careful review by the competent U.S. Government agencies before approval. We also submit that Treasury should recognize that calculations of margins of less-than-fair value sales are imperfect, and in several important respects are seriously biased against imports. Therefore, where a margin of only a few percentage points is found, no less-than-fair value finding should be made.

We agree with proposals in the Danforth bill and elsewhere to shorten the total period for the antidumping investigation by having overlapping timeframes for the injury and the less-than-fair value investigations. It is essential, however, that there be some additional time for the injury determination in order to give due weight to the level of any margins actually found by Treasury. Also, from our experience, we believe that Treasury should be empowered to extend the time necessary for its investigation because the time that is actually required to do justice to the facts of a particular case varies widely.

We think the proposal, which is embodied in a proposed Treasury regulation at this time and in some pending bills, to collect estimated dumping duties in the early stage of the investigation is fundamentally unsound. Differential pricing is not per se unfair; the purpose of the Act is not to impose a penalty, but to encourage the adjustment of any prices which are unduly low by the standards of the Antidumping Act. This purpose is served by the present system, which encourages exporters who may be running foul of the Act to increase their prices immediately to avoid the imposition of an antidumping duty. Exporters will not be so encouraged to raise their prices if estimated duties will be collected in any event, especially if the amount of the estimated duty is based upon an historical period, without regard to any recent price changes. In short, estimated duties ought not be collected, but if they are imposed, then, in fairness to the importer and the exporter, it is essential that Customs take account of the latest data available to it. The important point is that after a dumping finding, the master list determination must be made promptly.

Safeguards

1. *Developing countries.*—We believe that title II of the Trade Act of 1974 remains an appropriate framework for the implementation of the Safeguards

Code as it applies to the United States. While under the law the President already has the discretion to treat developing countries in accordance with their special requirements, it would be helpful if the law specifically so provided.

2. *Voluntary restraint agreements.*—We are not aware that implementation of the Code would involve any arrangements among private parties. Present U.S. legislation would appear to suffice for agreed arrangements limiting shipments to the United States.

3. *MFN.*—In the absence of compelling reasons of which we are not aware, we believe there should be no distinction between signatories and non-signatories. This is true also for the Subsidies Code. We recognize that it has been the intention of the Administration to afford an injury test only to those who enter into the engagements of the Subsidies Code. Considering, however, all of the many nations of the world, some of whom are not ready to enter into such arrangements, we think that the interest of the United States can be best served by a non-discriminatory application.

4. *Sections 201 to 203.*—We do not perceive any improvements that need to be made.

5. *Unilateral action.*—The standards should be essentially the same as the Executive has been applying in entering into orderly marketing agreements.

Senator RIBICOFF. Mr. James McGinness?

STATEMENT OF JAMES McGINNESS, VICE PRESIDENT, BRASTEX CORP.

Mr. McGINNESS. Members of the committee, my name is James McGinness and I am vice president of the Brastex Corp. of New York. I am accompanied this morning by Beth Ring, our attorney from the New York law firm of Freeman, Reed, Wasserman & Snyder.

Brastex is a major importer of terry towels and robes from Brazil and is the wholly-owned subsidiary of Artex, S.A., a Brazilian manufacturer of terry textile products. We have previously appeared before the subcommittee as well as before the Subcommittee on Trade of the House Ways and Means Committee to oppose the imposition of countervailing duties on our products. I am appearing today to strongly support several proposed revisions in the U.S. countervailing duty law.

First, we strongly support the requirement that a determination of "injury" be made before the imposition of countervailing duties. The recent experience of the countervailing duty proceeding brought in the fall of 1977 by the Amalgamated Clothing and Textile Workers Union against hundreds of textile products, including cotton towels, imported from Brazil presents a vivid example of the anticompetitive, trade-restraining consequences that can result when duties are imposed without any consideration of the need for protection to the comparable domestic industry.

The imposition of countervailing duties on our products without regard to the highly concentrated and oligopolistic structure of the comparable domestic industry was manifestly anticompetitive and effectively attempted to exclude fair competition in the American market.

The American textile industry as a whole is highly competitive, both in terms of price and design, and there are numerous domestic and foreign competitors in the American textile industry. However, this is not true with respect to the towel segment of the American industry. In fact, one major American textile producer has stated that: "The domestic towel market is dominated by four manufacturers with only three or four other domestic manufacturers in this market."

Thus, the American towel producing industry is dominated by four principal producers. Importations of terry towels from Brazil have dramatically declined, while imports of towels from all other countries have increased. In fact, the United States imported 34-percent fewer towels from Brazil in 1978 than it did in 1974, while during the same period of time, the rest of the world increased their exports of towels to the United States by over 8 percent. In 1978, the United States imported over 52 million towels; only 3.7 million of these towels—or 7 percent—were imported from Brazil.

Further, imports of cotton terry products from Brazil are subject to quotas provided in the Brazilian-United States Bilateral Cotton Textile Agreements. The quantity of all cotton terry products imported from Brazil is well below the quotas set forth in these agreements.

With respect to prices, Brazilian towels are sold either at or above the prices of comparable American products, and represent an almost insignificant share of the U.S. market.

In short, the competitive American producers of cotton terry towels are economically healthy and prosperous, and the imposition of countervailing duties in the amount of 37.2 percent on the relatively small amount of imports of these towels would effectively exclude them from an American market which is already highly concentrated and oligopolistic. Exclusion of terry towels from this market would be overly anticompetitive and may raise serious antitrust questions.

Soon after the filing of the countervailing duty petition by the Amalgamated Clothing & Textile Workers Union, Brastex Corp. submitted legal memoranda to both the Antitrust Division of the Department of Justice and the Treasury Department in support of the position that the Government has an inherent right to avoid restrictions on competition, particularly in an already concentrated industry despite the absence of an injury requirement in the countervailing duty law. Both Federal agencies advised us that they were helpless to consider the anticompetitive consequences of the Union's proceeding because of the lack of an injury requirement.

We understand that this situation has changed at least with respect to the injury investigation in the Antidumping Act. Our counsel advises us that the Foreign Commerce Section of the Antitrust Division of the Department of Justice has established an Office of Trade Policy to monitor unfair trade practice actions before the International Trade Commission. If an injury requirement is adopted as a condition precedent to the imposition of countervailing duties, and the Justice Department is responsible for presenting the antitrust implications at the injury stage of a dumping investigation, then the Justice Department should also have the same voice in advancing the antitrust consequences of invoking the countervailing duty law at the injury stage of a countervailing duty proceeding.

Such intervention would have been particularly appropriate in the case of the countervailing duty petition against textile products from Brazil. Brazil is the world's second largest distributor of terry cotton products. Over 13,000 Brazilian workers are employed in this industry which contributes importantly to Brazil's economic growth.

I would like to conclude, Mr. Chairman, by merely saying that we strongly support the enactment of an injury requirement pursuant to the negotiated subsidy code at the Multilateral Trade Negotiations and that we believe in the event of such enactment the Justice Department Foreign Commerce Section would be an appropriate agency to monitor the antitrust aspects of such a proceeding to avoid another case of protectionist overkill.

Senator RIBICOFF. Thank you very much, Mr. McGinness. Your entire statement will go into the record as if read.

Senator Long?

Senator LONG. No questions.

Senator RIBICOFF. Senator Baucus?

Senator BAUCUS. No questions.

Senator RIBICOFF. Thank you very much, Mr. McGinness.

[The prepared statement of Mr. McGinness follows:]

STATEMENT OF JAMES MCGINNESS, VICE PRESIDENT, BRASTEX CORP.

Members of the Committee, my name is James McGinness and I am Vice President of the Brastex Corporation of New York. Brastex is a major importer of terry towels and robes from Brazil, and is the wholly-owned subsidiary of Artex, S.A., a Brazilian manufacturer of terry textile products. We have previously appeared before the subcommittee as well as before the Subcommittee on Trade of the House Ways and Means Committee to oppose the imposition of countervailing duties on our products. I am appearing today to strongly support several proposed revisions in the United States Countervailing Duty Law.

First, we strongly support the requirement that a determination of "injury" be made before the imposition of countervailing duties. The recent experience of the countervailing duty proceeding brought in the Fall of 1977 by the Amalgamated Clothing and Textile Workers Union against hundreds of textile products, including cotton towels, impored from Brazil presents a vivid example of the anticompetitive, trade-restraining consequences that can result when duties are imposed without any consideration of the need for protection to the comparable domestic industry. The imposition of countervailing duties on our products without regard to the highly concentrated and oligopolistic structure of the comparable domestic industry was manifestly anticompetitive and effectively attemped to exclude fair competition in the American market.

The American textile industry as a whole is highly competitive, both in terms of price and design, and there are numerous domestic and foreign competitors in the American textile industry. However, this is not true with respect to the towel segment of he American industry. In fact, one major American textile producer has stated that:

"* * * the domestic towel market is dominated by four manufacturers * * * with only three or four other domestic manufacturers in this market * * *."[1]

Thus, the American towel producing industry is "dominated" by four principal producers. Importations of terry towels from Brazil have dramatically declined, while imports of towels from all other countries have increased. In fact, the United States imported 34% fewer towels from Brazil in 1978 than it did in 1974, while during the same period of time, the rest of the world increased their exports of towels to the United States by over 8%. In 1978, the United States imported over 52 million towels; only 3.7 million of these towels (or 7%) were imported from Brazil.

Further, imports of cotton terry products from Brazil are subject to quotas provided in the Brazilian-United States Bilateral Cotton Textile Agreements. The quantity of all cotton terry products imported from Brazil is well below the quotas set forth in these Agreements.

With respect to prices, Brazilian towels are sold either at or above the prices of comparable American products, and represent an almost insignificant share of the United States market.

In short, the competitive American producers of cotton terry towels are economically healthy and prosperous, and the imposition of countervailing duties

[1] Fieldcrest Mills, Inc., Securities and Exchange Commission, Form 10K (December, 1976).

in the amount of 37.2% on the relatively small amount of imports of these towels would effectively exclude them from an American market which is already highly concentrated and oligopolistic. Exclusion of terry towels from this market would be overly anticompetitive and may raise serious antitrust questions.

Soon after the filing of the countervailing duty petition by the Amalgamated Clothing and Textile Workers Union, Brastex Corporation submitted legal memoranda to both the Antitrust Division of the Department of Justice and the Treasury Department in support of the position that the government has an inherent right to avoid restrictions on competition, particularly in an already concentrated industry despite the absence of an injury requirement in the Countervailing Duty Law. Both federal agencies advised us that they were helpless to consider the anticompetitive consequences of the Union's proceeding because of the lack of an "injury" requirement.

We understand that this situation has changed at least with respect to the injury investigation in the Antidumping Act. Our counsel advises us that the Foreign Commerce Section of the Antitrust Division of the Department of Justice has established an Office of Trade Policy to monitor unfair trade practice actions before the International Trade Commission. If an injury requirement is adopted as a condition precedent to the imposition of countervailing duties, and the Justice Department is responsible for presenting the antitrust implications at the injury stage of a "dumping" investigation, then the Justice Department should also have the same voice in advancing the antitrust consequences of invoking the Countervailing Duty Law at the injury stage of a countervailing duty proceeding.

Such intervention would have been particularly appropriate in the case of the countervailing duty petition against textile products from Brazil. Brazil is the world's second largest distributor of terry cotton products. Over 13,000 Brazilian workers are employed in this industry which contributes importantly to Brazil's economic growth. The Brazilian Government does not own any part of Brazil's terry product industry. However, Brazilian producers of terry products are at a significant disadvantage in the world market since Brazil restricts the importation of cotton as part of its overall economic, social and fiscal development program. One of the principal reasons for this restriction is to provide employment in the vast Northeast Region, which is one of the most underdeveloped regions in the world.[2] As a result of this restriction on imports of cotton, the price of Brazilian cotton has been almost 30% higher than the price of cotton on the world market. The disadvantage faced by Brazilian terry producers in the price of their raw material has been demonstrably obvious in the United States market where, as indicated above, importations of cotton terry towels from Brazil have been dramatically declining in recent years.

In view of the prosperity and high concentration of the comparable domestic industry, an injury requirement in the Countervailing Duty Law may have prevented the imposition of countervailing duties against cotton terry towels from Brazil and would have afforded Brazilian importers a better chance to compete fairly in the American market.

We strongly support the enactment of injury requirement pursuant to the negotiated Subsidies Code at the multilateral trade negotiations, and we believe that in the event of such enactment, the Justice Department's Foreign Commerce Section would be an appropriate agency to monitor the antitrust aspects of such a proceeding and to avoid another case of protectionist overkill.

Thank you for this opportunity to be heard by the Subcommittee.

Senator RIBICOFF. Is Mr. Meister here?

Mr. Schwanke? Is Mr. Schwanke here?

That will conclude the hearings for this morning. This committee will stand adjourned until tomorrow morning at 10 a.m.

[Thereupon, at 11:50 a.m. the subcommittee recessed, to reconvene on Thursday, February 22, 1979 at 10 a.m.]

---

[2] The "Northeast Region" comprises the State of Maranhano, Pliaul, Ceara, Rio Grande Do Norte, Paraiba, Pernambuco, Alagoas, Sergipe, Bahia and the "drought area" in the State of Minas Gerais.

IMPLEMENTATION OF THE MULTILATERAL TRADE NEGOTIATIONS

THURSDAY, FEBRUARY 22, 1979

UNITED STATES SENATE,
SUBCOMMITTEE ON INTERNATIONAL TRADE
OF THE COMMITTEE ON FINANCE,
Washington, D.C.

The subcommittee met, pursuant to recess, at 10:15 a.m. in room 2221, Dirksen Senate Office Building, Hon. Abraham Ribicoff (chairman of the subcommittee) presiding.

Present: Senators Ribicoff, Long, Nelson, Matsunaga, Moynihan, Roth, Danforth, Heinz, Dole, and Chafee.

[The opening statement of Senator Roth follows:]

OPENING STATEMENT BY SENATOR WILLIAM V. ROTH, JR.

Senator ROTH. Thank you, Mr. Chairman.

As you have mentioned, these hearings demonstrate that we have Government in the sunshine. They are also a manifestation of the increased role that the private sector should play in the conduct of the trade agreements program.

Today we are concentrating on the form and substance of implementing legislation that will be required for the MTN agreements to become part of our domestic system of laws and regulation. The executive branch ultimately prepares the text of this legislation and will formally submit it with the agreements for approval by Congress. Once formally submitted, the package is unamendable.

Right now, the executive branch is consulting with Congress to ascertain what would be desirable elements in the implementing legislation. With these hearings, we are asking you, the public, for similar advice.

This consultation period offers us an opportunity to propose revisions to some outmoded or ineffective aspects of the laws by which we regulate foreign commerce. But unless we speak with a strong, clear, and unified voice, the executive branch may ignore our proposals. We must take this opportunity to express in no uncertain terms the major elements of reform that must be accomplished before the MTN package can be made to realize its full potential. Without effective implementing legislation, the Tokyo round will be just another ambitious trade negotiation that failed to produce lasting, meaningful results.

Senator HEINZ (presiding). The Subcommittee on Trade will come to order. Senator Ribicoff is on his way back from the floor but, because we have about 3 hours worth of testimony and questions at minimum, I would like to get started right away and I would like to call Mr. Charles Carlisle, vice president, St. Joe Minerals to be our first witness.

I might also observe that testimony will be limited to 10 minutes. If you have not completed your testimony at the end of 10 minutes time, we will put the entire statement in the record.

STATEMENT OF CHARLES R. CARLISLE, VICE PRESIDENT, ST. JOE MINERALS CORP., ON BEHALF OF AD HOC SUBSIDIES COALITION: ACCOMPANIED BY STANLEY NEHMER, PRESIDENT, ECONOMIC CONSULTING SERVICES, INC., AND DONALD DE KIEFFER, ATTORNEY, COLLIER, SHANNON, RILL, EDWARDS & SCOTT

Mr. CARLISLE. Good morning, Mr. Chairman. For the record, my name is Charles Carlisle, vice president of St. Joe. Today I am appearing on behalf of an ad hoc coalition of 33 industry and labor organizations that have been working for more than a year for amendments to make the countervailing duty statute more effective against foreign subsidies.

With me, on my right, is Mr. Stanley Nehmer, president of Economic Consulting Services, based in this city, and Mr. Donald deKieffer on my left of the Washington law firm of Collier, Shannon, Rill, Edwards & Scott. Both of these gentlemen have had extensive experience with the countervailing duty statute.

Mr. Chairman, with your permission I propose that our prepared remarks, together with the four attachments, be entered in the record, and I would like to summarize them in slightly different words.

We are going to make four points this morning. First, our trade negotiators have done a good job on negotiating the subsidies code in Geneva, as far as we know, at this time. We have not seen the final version of it.

On the basis of what we now know, we are hopeful that the code will serve as an acceptable international framework for the control of subsidies and as a basis for implementing legislation that will be helpful to our country.

Second, the implementing legislation and how that legislation will be administered are more important than the subsidies code itself. We have learned from bitter experience that there is often a substantial gap, I should say, between the promise of the countervailing duty statute and the performance of the Treasury Department under the statute.

Third, we have from the outset believed that this country's countervailing duty statute requires substantial amendment regardless of the outcome of the Geneva negotiations. Why? First, we think that foreign subsidies practices are widespread and harmful to our economy and second, we believe that the present statute and Treasury's administration of it are seriously inadequate. We strongly doubt, frankly, that Treasury is capable of managing this program effectively.

Fourth, we are proposing that the implementing legislation contain some 16 amendments to the countervailing duty statute to make it a more effective instrument against foreign subsidies, and these are contained in attachment 2 to our testimony.

Among our proposals is one that would remove the administering authority from the Treasury Department.

I also would like to stress at this time that, to the best of our knowledge, our proposals are consistent with the Geneva Subsidies Code in every important respect. Let me turn briefly to each of those points.

First, the subsidies code. Ambassador Strauss and the principal American negotiators of the code, Mr. Rivers and Mr. Greenwald, have done a good job under trying circumstances, but the negotiations are not yet completed. We have not yet seen the final document. We suspect that, like all negotiated documents, the code will not entirely satisfy anyone, including us. But, as I said a moment ago, we hope that it will serve as an acceptable compromise.

Speaking of compromise, there is one key compromise in the code. The United States has agreed to an injury test in return for international recognition of the fact that internal subsidies—by which I mean such things as regional development grants and covering of losses of State-owned companies and so on, can adversely affect industries in other countries and for recognition that countervailing measures may be employed against those internal subsidies.

As you know, under current law a domestic complainant does not have to demonstrate injury except in the case of duty-free merchandise. Many of us in our group believe that there should be no requirement for an injury test because we think that subsidization constitutes a per se violation of fair trade concepts and injury should be presumed.

Currently, the GATT does not require a U.S. industry test. However, a number of organizations in the coalition are prepared, reluctantly, to go ahead with an injury test provided that that meets the requirements of simplicity, certainty, and low threshold.

We do hope, Mr. Chairman, that this committee will give this matter the closest possible attention.

Why is there a need for amendments to the countervailing duty statute, our second point? First, foreign subsidies are, in our judgment, pervasive and probably increasing. As partial evidence, attachments 3 and 4 are two articles which, while not exhaustive, are illustrative of the kinds of subsidies that we are concerned about.

Second, as I said a minute or two ago, the current law, and Treasury's administration of it, are clearly inadequate. A few examples. First, Treasury has frequently missed statutory deadlines, sometimes by many months; in one or two cases, extending to a year.

Second, they have reduced countervailing duties in questionable ways not specifically authorized by either the countervailing duty statute or by regulation.

Third, they have conducted ex parte meetings with foreign representatives at which allegedly confidential information has been submitted to Treasury.

The difficulties of rebutting information furnished in this manner are obvious, or does Treasury verify the information.

Moreover, the fourth point, they have changed rules without adequate opportunity for comment.

Now, Mr. Robert Mundheim, Treasury's General Counsel whom I personally know and respect and who is currently in charge of this program, has indicated that he may be prepared to make some changes administratively, but we believe that to have a thorough revitalization of the statute's administration it is necessary to move the administering authority out of Treasury.

Where would we put that administering authority? Probably in a restructured, and perhaps renamed, Commerce Department. We understand that the administration is now considering placing the various foreign trade functions in a revamped Commerce Department and apparently this could be done, Mr. Chairman, by using the President's existing authority. It would require little or no new legislation.

We would have to see the details but, in principle, we think this is a good idea.

Now, if in the opinion of this committee and the Congress, legislation is required, then the Trade Department bill, S. 377, which was proposed by Senators Roth and Ribicoff and was cosponsored by, among others, you, Senator Heinz, we think would merit serious consideration.

Attachment II, as I said, contains our other proposals. Time does not permit going over these in detail, but let me summarize briefly what they would do.

First, they would revitalize and tighten the administration of the statute. Second, they would reduce considerably the administering authority's discretion. Third, they would strip away a lot of the secrecy surrounding countervailing duty proceedings and make the entire process somewhat more formal. Fourth, they would provide a more certain instrument against the countless internal subsidies which governments employ. Now Congress is obviously becoming aware of the problems which concern many of us in our coalition.

Senator Danforth's bill, S. 223, cosponsored by a number of Senators on this committee, again including you, Senator Heinz, is certainly a big step in the right direction, and we do anticipate that other legislation will be introduced soon so that additional attention can be given to this matter.

In my concluding minute, let me make four points quickly.

First, the way to build support for the trade package is to address this subsidies question effectively.

Second, to advocate and carry out effective countermeasures against subsidies is to support, not hinder, free trade. Subsidies distort market functions.

Third, our proposals are not contrary in any important respect to the subsidies code negotiated at Geneva.

Finally, we are entering an unusual legislative situation in which we are going to have legislation that can only be voted up or down, without amendment. That places a premium on close scrutiny of the proposals before they are formally received.

We have no doubt that you and other members of this committee will give this matter the closest possible attention. Thank you very much for hearing our views this morning. We are prepared to try to answer any questions you might have.

Senator HEINZ. Mr. Carlisle, thank you very much. There is one thing that you said, rather quickly, but I think it is quite significant, if I heard you right, and that is that you do not believe that the amendments that you have provided to the committee as an additional submission would seriously conflict with the code being negotiated. Is that correct?

Mr. CARLISLE. That is correct, Senator Heinz. We have been in close touch, as have others, with our negotiators and, to the very best of our knowledge, there is not any serious conflict at all.

Senator HEINZ. Have you discussed the amendments specifically with Ambassador Strauss?

Mr. CARLISLE. Yes; we have, and also with Mr. Richard Rivers, the chief American negotiator.

Senator HEINZ. How have Mr. Rivers and Mr. Strauss reacted to your proposed amendments?

Mr. CARLISLE. I am glad to say quite favorably. It is my understanding that they believe that the amendments which we propose are constructive, and I think they are prepared to help work for our amendments along these lines.

Senator HEINZ. I bring these points out on the record for several purposes, one of which is, as you know, Mr. Carlisle, that this is an area I have been involved in for some time. I do not know what the final result of consultations between the committee and the administration will be, but I think it is important for all of us to recognize that what we want, as you pointed out, is an agreement that is going to work. And the purpose of your amendments, and the purpose of the amendments I am working on, are to improve the code, not to subvert it, and that all of us—and I commend you and your associates in particular—have been in close consultation with the STR and his staff.

Let me ask, assuming that the subsidies code is adopted, should there be any provision in the implementing legislation that would give guidance for the currently outstanding, countervailing duty determination?

Mr. CARLISLE. Senator, I would like to suggest that Mr. Nehmer might address that question.

Mr. NEHMER. Senator, if I understand your question correctly, what happens to existing countervailing duty actions once the code is adopted and implementing legislation is enacted.

You have two actions, one that has been waived in the past and the action when it is waived through the Congress, the waiver of authority exists and it will continue to be waived and those which have not been waived and are on the books. It would be a very serious mistake if the legislation would require that those existing cases, then, be subjected to an injury test which is what is being put into the code and presumably in the implementing legislation.

Senator HEINZ. I think that there are two questions here. One is whether a waiver authority should be continued in the law and the second is the one that you just mentioned, the question of the injury test. I think those are two distinct issues.

Mr. NEHMER. Certainly in the first one, I think all of us feel that there should not be any waiver authority in the law beyond whatever the extension is that is provided for. The code presumably to be prescribed to by many foreign governments, most foreign governments that have been involved in the negotiation, certainly does set a framework for future actions There should be no basis for any waiver of the action of the countervailing duty once they have subscribed to the code.

On the question of the injury test, as Mr. Carlisle pointed out, many of the 33 organizations that are a part of this coalition do not feel that there should be an injury test. If there should be one, it certainly should be one that is expeditious and at a low threshold of injury.

Senator HEINZ. One other issue that arises is the extent to which we should expect reciprocity from other nations. Do you have any thoughts as to how we could provide in our implementing legislation that we will not fully implement a trade agreement for a particular code signatory unless that signatory implements the code on a fully reciprocal basis? Is that something you could comment on?

Mr. NEHMER. Certainly if a foreign government commits itself as a signatory of the code not to engage in subsidy practices and then it violates that obligation, it does reimpose or continue subsidies. Certainly at the very least, there should be no injury test required before the United States imposes a countervailing duty.

That, it seems to me, to be the minimum the United States should require.

Mr. CARLISLE. Let me just add a word or two. The code, of course, does contain a disputes settlement process, but if that did not work, as Mr. Nehmer suggests, with another country in violation of the code in some significant fashion, then I think we would be relieved, or should be relieved, of extending obligations to them under the code.

Senator HEINZ. Very well.

Mr. deKieffer?

Mr. DEKIEFFER. I would like to echo Mr. Nehmer's remarks, particularly in one aspect, the nonsignatory to the code. Certainly the procedure would not apply to them. Perhaps we would have no option under what is called the track I system. I see no reason to give the nonsignatories to the code the same breaks that the signatories to the code would have.

I think one way of implementing that would be to continue the existing countervailing duty law to the countries who refuse to sign the code. No injury test.

Mr. CARLISLE. If I could add one thing to that, Senator Heinz. On this very point, certainly it would seem to us that any legislation which was introduced should require an injury test only when the international obligations of the United States so required. If a country is not signatory to the code, it would seem to us that no injury test should be used.

Senator HEINZ. In the same vein, section 126 of the Trade Act of 1974 contains provisions that attempt to secure reciprocal and nondiscriminatory treatment for U.S. commerce in foreign trade. Should we take this section to its ultimate conclusion and reassert the conditional principle in our trade relations with other countries?

Mr. DEKIEFFER. Yes, Senator. I certainly believe that we should adopt a policy that would make it possible for us to take action against people who will not agree to sign a code which is designed to liberalize trade. If a country, for reasons of its own, does not carry our commitment to liberalize trade, I do not think they deserve the benefits of negotiations that have been carried forward in the GATT.

I see no obligation on our part, moral or legal, to do so.

Mr. NEHMER. I certainly agree with Mr. deKieffer. One of the big problems that I would foresee is that a country will sign the code and will reimpose subsidies in a hidden way which will not be made public, then it is going to be up to the agency administering this program for the United States to be able to have enough guts to investigate reports to keep on top of what foreign governments are doing.

It is this particular area, among others, that has led us to conclude that the Treasury Department is not captble of really managing this program in that kind of way.

Senator HEINZ. Would you care to submit for the record, because we are running a little short of time—maybe it is in your submission—your rationale, or reasons in more detail, of why the Treasury has not been a sufficient guardian of the countervailing duty statutes?

Mr. CARLISLE. Senator, we will be glad to submit soon for the record certainly what I would call our rationale. We cannot really furnish an exhaustive list because this information is simply not available to us and you might want to address some form of inquiry to the Treasury Department also, but yes; we will submit what we know about some of these practices in more detail.

Senator HEINZ. I am sure that would be appreciated by the committee. I am advised we do expect to meet with Ambassador Strauss on March 6.

In order for the committee to see it, we would have to have it within 4 or 5 days.

Mr. CARLISLE. We will have it here within 4 or 5 days, sir.

Mr. NEHMER. The list of horror stories is quite long, sir.

[The following was subsequently supplied for the record:]

ADMINISTRATION OF THE COUNTERVAILING DUTY STATUTE BY THE TREASURY DEPARTMENT

In response to the request of Senator Heinz at the International Trade Subcommittee's hearings on February 22, 1979, the Ad Hoc Subsidies Coalition of 33 organizations herewith submits the details of our charges regarding the Treasury Department's administration of the countervailing duty statute.

We find that the Treasury Department has been guilty of the following practices:

1. Treasury has missed statutory deadlines.
2. Treasury has reduced the calculated amount of a subsidy, and hence the contervailing duty, in questionable ways.
3. Treasury has accepted unverified information from foreign representatives as a basis for its determinations.
4. Treasury has changed rulings without adequate opportunity for interested parties to comment.
5. Treasury has stretched the authority of the Trade Act of 1974 with regard to the granting of waivers.

These charges are detailed in the following sections.

1. TREASURY HAS MISSED STATUTORY DEADLINES

One of the important changes intended to strengthen the countervailing duty statute as incorporated in the Trade Act of 1974 was the 12 month time limit established for the Treasury Department's consideration of countervailing duty petitions. This time limit was established as part of the legislative "deal" which gave the Secretary of the Treasury authority to waive countervailing duties under certain circumstances. Under the amendment, the Treasury Department has six months from the time of receipt of a valid petition to make a preliminary determination with respect to the exisence of foreign contervailable practices and then it has an additional six months in which to make a final determination. Notwithstanding the statutory time limits, Treasury has missed deadlines.

Two cases in particular come to mind, one involving Argentine leather apparel where the statutory deadline for a final determination was January 21, 1978 and the other involving Argentine footwear, where the deadline was February 11, 1978. The decisions on both products were finally issued on January 17, 1979; that for leather apparel was negative and the decision on Argentine footwear was affirmative. Thus, Treasury took twelve months and eleven months longer, respectively, than mandated in the statute to make its determinations in these two cases.

The effect of failing to make determinations within the statutory deadline is to deny petitioners due process, particularly where considerable time has elapsed since the deadline. Thus, when an affirmative decision is finally made, petitioners have suffered from Treasury's failure to institute countervailing duties earlier. When a negative determination is finally made, a petitioner has been denied the opportunity to challenge such determinations at an earlier date, in accordance with Section 516 of the Tariff Act of 1930, as amended.

Even a simple publication in the *Federal Register* of a notice of appeal of Treasury's countervailing duty determinations encounters unnecessary delay. Over two months ago the Amalgamated Clothing & Textile Workers Union filed with Treasury notice of its intent to appeal six such determinations. To date, Treasury has failed to publish notice to this effect in the *Federal Register*. The appeal process cannot move forward without such notice. Once again due process is being denied by Treasury.

2. TREASURY HAS REDUCED THE CALCULATED AMOUNT OF A SUBSIDY, AND HENCE THE COUNTERVAILING DUTY, IN QUESTIONABLE WAYS

Treasury has pursued a policy which they justify as provided for in the countervailing duty statute of reducing the gross amount of subsidy by various offsets. Although in most cases the reductions are in the form of indirect taxes related to the product which receives the subsidy, Treasury has found some rather exotic items with which to reduce the subsidy. These include, in the case of the waiver on handbags from Colombia, the effects of the devaluation of the foreign currency on the grounds that the Colombian Government allows as much as nine months to elapse before subsidies are paid. In this case Treasury even reduced the subsidy by the cost of the interest on the money not received by Colombian handbag producers and exporters during this nine-month period. Treasury describes this offset in the *Federal Register* of May 2, 1978 as "the present value effect of the (exporter's tax certificates) resulting from the inflationary impact on . . . delayed payment." Furthermore, since these exporter's tax certificates are sold in the Bogota Stock Exchange, Treasury also allowed a "discount paid by holders of (exporter's tax certificates) in the stock exchange, thus effectively not providing full value of the (exporter's tax certificates) once sold." It is interesting to note that several of these offsets were disallowed in a more recent case involving Colombian textiles and apparel, but Treasury has not bothered to go back to its earlier decision to recompute the countervailing duties on Colombian handbags. The Colombian handbag case is not untypical.

It is so important to recognize that the reductions which Treasury makes in the subsidy through subtracting the indirect taxes related to the products ignore completely the fact that in virtually all of the foreign countries concerned these indirect taxes would have been borne by the manufacturer even in the absence of the subsidy program, and that the subsidy program clearly is intended to give the foreign manufacturers an edge in selling to the U.S. This is exactly what the countervailing duty statute is aimed at offsetting, but Treasury nevertheless goes on deducting these indirect taxes to the point where many negative or de minimis determinations result or the countervailing duty is significantly smaller than it should be.

3. TREASURY HAS ACCEPTED UNVERIFIED INFORMATION FROM FOREIGN REPRESENTATIVES AS A BASIS FOR ITS DETERMINATIONS

Treasury makes most of its determinations with regard to the size of a countervailing duty or a waiver of a countervailing duty on the basis of data submitted by foreign governments and by foreign firms or associations of firms. In neither case are the data verified by Treasury. Admittedly, it is difficult for Treasury to verify data submitted by foreign interests, but at least an effort should be made to assure the American petitioner that, indeed, the data on which a determination is made by Treasury are reliable. Treasury says that it must take the word of a foreign government. Yet in a case involving Argentine footwear, the word of a foreign government was not good enough. It reneged on a commitment which had been made to Treasury. In that particular case, Treasury said "but they had a change of governments in Argentina." Unfortunately the new government in power did not bother to advise Treasury that it had reversed the commitment made by its predecessors, and Treasury did not reopen this case for a considerable period of time after the subsidies were reinstated.

4. TREASURY HAS CHANGED RULINGS WITHOUT ADEQUATE OPPORTUNITY FOR INTERESTED PARTIES TO COMMENT

Even when Treasury once announces a net subsidy, taking into account the reduction for indirect taxes, it continues to amend those calculations mostly on the downside based upon new information which it receives from the foreign government. For instance, in the case of Spain, Treasury announced a 4 percent countervailing duty on unwrought zinc in April 1977. In June 1978, Treasury reduced the existing countervailing duty on zinc and on several other Spanish products subject to U.S. countervailing duties by revising its method for calculating indirect tax subsidy offsets. This action was taken after consultation with Spanish authorities but without consultation with U.S. industries involved. Despite the controversy Treasury aroused over the basis for this reduction, Treasury reduced the countervailing duty but without suspending the liquidation of entries until all views could be heard.

Treasury later realized the views of the U.S. industries had merit and that it had made a mistake on its revised method for calculating the countervailing duties. Six months later Treasury reverted to the basis of calculations it used prior to June 1978 with the effect that the countervailing duty was now raised again, although not quite to the original levels.

In the interim, between June 15, 1978 and January 17, 1979, because Treasury had not suspended the liquidation of entries on Spanish zinc, nonrubber footwear, and bottled olives, importers benefitted from a lower rate of countervailing duty which gave them a windfall they certainly did not merit.

5. TREASURY HAS STRETCHED THE AUTHORITY OF THE TRADE ACT OF 1974 WITH REGARD TO THE GRANTING OF WAIVERS

The Trade Act and the temporary four-year waiver authority which expired January 3, 1979, provided the Secretary of the Treasury with authority to waive the imposition of countervailing duties when he determines that:

1. adequate steps have been taken to reduce substantially or eliminate the adverse effect of the bounty or grant on domestic producers;
2. that there is a reasonable prospect that trade agreements to reduce or eliminate non-tariff barriers will be entered into; and
3. the imposition of countervailing duties would be likely to seriously jeopardize the satisfactory completion of such negotiations.

Treasury Department officials have consistently interpreted these three criteria—all of which must exist before a waiver can be issued—so loosely as to permit them to justify any action administratively decided upon.

In one case, involving the imposition on January 12, 1976 of a 14 percent countervailing duty on Brazilian handbags, the Secretary of the Treasury undertook subsequently to waive this duty as part of a "package agreement" on trade issues which he personally negotiated during a visit to Brazil in May 1976. That waiver on Brazilian handbags was made effective July 1, 1976. Can it be said that at that time there was a "reasonable prospect" that successful trade agreements were to be entered into? Could it have been said in May 1976 that the imposition of the additional duty was "likely to seriously jeopardize the satisfactory completion of such negotiations?" Hardly, on both counts.

A recent glaring example of a new horror story is that related to Treasury's finding that Uruguayan subsidies on leather wearing apparel were equivalent to 12 percent of the f.o.b. price for export to the United States.

In its final determination issued January 30, 1978, Treasury noted an intent to waive the imposition of countervailing duties on the basis that it had received assurances from Uruguay of a phase-down of only one subsidy—the "reintegro" program of cash rebates which alone amounted to 20 percent or more of the value of the goods exported. However, because leather wearing apparel from Uruguay entered the United States free of duty under the Generalized System of Preferences, the International Trade Commission was called upon (as required by Section 303(b) of the Trade Act) to determine whether Uruguayan subsidies on on leather wearing apparel injured the United States industry. Following a comprehensive investigation, the ITC in April 1978, announced a unanimous injury finding. Nonetheless, even in the face of such a unanimous decision by the Commission with respect to the subsidized Uruguayan leather apparel, the Treasury Department carried out its planned waiver, which was duly announced in the Federal Register of June 30, 1978.

Treasury justified its waiver on the basis of Uruguayan assurances that it would phase out its major "reintegro" subsidy program by January 1, 1979. In agreeing to waive the countervailing duty on this basis, Treasury did not require the Government of Uruguay to reduce or eliminate other countervailable trade practices which the Treasury had determined to exist in Uruguay. Treasury's justification for permitting a waiver while the Uruguayans would leave these subsidies intact, was that they were very small, perhaps in the order of 2 percent, whereas the major subsidy program, which provided a subsidy of at least 20 percent was netted down to around 12 percent.

The dometic industry argued with Treasury officials that they were ignoring an additional subsidy benefitting Uruguayan tanners equal to 8 percent of the value of the leather content in various products exported. Treasury decided differently. However, more recently, Treasury discovered that, indeed, it had made a mistake and that the 8 percent subsidy on the leather content of products exported to the United States was a countervailable duty. Thus, instead of a residual of 2 percent after the scaling down of the major subsidy, Treasury found that the remaining subsidy on Uruguayan leather apparel added up to a total of 13.3 percent. It decided to impose this subsidy effective November 13, 1978 and revoked its former waiver.

Even after Congress failed to extend the countervailing duty waiver authority last October, Treasury went ahead and waived the countervailing duty of almost 38 percent on Brazilian textiles and apparel on assurance that subsidies would be reduced by half by January 1, 1979 and by the remaining half by January 1, 1980. In the interim of one year, Brazil is being allowed to continue subsidies of a substantial amount without having countervailing duties applied, to the detriment of American firms and workers.

CONCLUSION

The foregoing documents what our group considers to have been a mismanagement of the countervailing duty program by the Treasury Department. This record does not support the assertion of the Secretary of the Treasury to the Joint Economic Committee on January 31, 1979 that Treasury does its "best to administer the statute fairly and efficiently." It is for these reasons that our group of 33 organizations believes that the administration of the countervailing duty statute should be removed from the Treasury Department.

Senator HEINZ. On behalf of the other members of the committtee, I would like to say we appreciate your appearance, and if members of the committee do have additional questions, I am sure they will submit them to you in writing. We would appreciate whatever help you can give us on them.

Mr. CARLISLE. Thank you very much, Senator.

[The prepared statement of Mr. Carlisle follows:]

STATEMENT OF CHARLES R. CARLISLE ON BEHALF OF THE AD HOC SUBSIDIES COALITION

Mr. Chairman, my name is Charles R. Carlisle. I am a Vice President of St. Joe Minerals Corporation which has its headquarters in New York City. Today I am appearing on behalf of an ad hoc coalition of 33 industrial and labor organizations (Attachment 1) that are working for amendments to make the countervailing duty statute more effective against foreign subsidies. Our coalition began its work over a year ago.

With me are Mr. Stanley Nehmer, President of Economic Consulting Services, based in this city, and Mr. Donald deKieffer of the Washington law firm of Collier, Shannon, Rill, Edwards and Scott. Both Messrs. Nehmer and deKieffer have had extensive experience with the countervailing duty statute and both represent a number of clients who have filed cases under the statute.

PRINCIPAL POINTS

Our testimony makes the following principal points:

1. Our trade negotiators, working in a difficult situation, appear to have done a good job of negotiating a Subsidies Code at Geneva. We have not yet seen a final version of the Code, but, on the basis of what we know now, we are hopeful that the Code can serve as an acceptable international framework to control the use of subsidies and as the basis for implementing legislation that will be helpful to American labor and industry.

2. From our standpoint, and, we believe, that of the Congress, the implementing legislation and how that legislation will be administered are more important than the Subsidies Code itself. Many of the organizations represented in our coalition have learned from bitter experienece that there has been a vast gap between the promise of the countervailing duty statute and the performance of the Treasury Department under the statute.

3. Since its inception our coalition has believed that this country's countervailing duty statute requires substantial amendment regardless of the outcome of the Geneva negotiations. We have taken this position because, first, we believe that foreign subsidy practices are widespread, growing and harmful to the American economy; and, second, because we believe that the present statute and the Treasury Department's administration of it are seriously inadequate. Indeed, we strongly doubt that Treasury is capable of managing this program effectively.

4. We are proposing that the implementing legislation include some 16 amendments to the countervailing duty statute to make it a more effective instrument against foreign subsidy practices. Among our proposals is one that would remove the administration of the countervailing duty statute from the Treasury Department. I want to stress that our proposals are consistent with the Geneva Subsidies Code in every important respect.

I now would like to turn briefly to each of those points.

THE SUBSIDIES CODE

As I have noted, Ambassador Strauss and the principal American negotiators of the Subsidies Code, STR General Counsel Richard Rivers and Mr. John Greenwald have done a good job under trying circumstances. But the negotiations have not been completed as yet. We suspect that, like all negotiated documents, the Code will not entirely satisfy anyone, including us. We hope, however, that it will be an acceptable compromise, and that it will permit the introduction of worth-while implementing legislation.

We would like to call the Committee's attention to the key compromise: in return for international recognition of the fact that "internal" subsidies (such as regional development grants and the underwriting of losses by state-owned companies), as well as export subsidies, can adversely affect industries in other countries, and recognition that countervailing measures may be employed against those internal subsidies, the United States has agreed to accept an "injury test." Under current law, a domestic complainant does not have to demonstrate injury except in the case of duty-free merchandise.

Many of us believe that there should be no requirement to demonstrate injury because subsidization constitutes a *per se* violation of fair-trade concepts and injury should be presumed. Currently, the GATT does not require a U.S. injury test. Furthermore, an injury test involves a cost and expenditure of time which many petitioners will find to be very burdensome.

A number of the organizations in our coalition are prepared, however, to accept—reluctantly—an injury test in the Code and in the implementing legislation provided that the test meets the requirements of simplicity, certainty and low threshold. We hope that the Finance Committee will give this matter the closest possible attention.

THE NEED FOR AMENDMENTS TO THE C.V. DUTY STATUTE

I have noted our belief that the implementing legislation is of paramount importance and that the countervailing duty statute would require a number of important amendments even if there were no Subsidies Code. Let me explain why.

First, while no one really knows the extent of foreign subsidy practices because they are constantly changing and many are hidden, there can be little doubt that they are pervasive and probably increasing. As partial evidence, we have attached two documents to our testimony (Attachments 3 and 4): "Europe's Subsidy Spree" from the August, 1978, edition of Dun's Review and "Competitiveness in the U.S. Minerals Industry," a statement which I submitted to the staff conducting the President's Non-Fuel Minerals Policy Study. Both documents are, of course, illustrative rather than exhaustive.

Second, we believe, as I said earlier, that the current law and Treasury's administration of it are clearly inadequate. Let me give you a few examples.

Treasury frequently has:

Missed statutory deadlines, not by just a few days but often by many months, in one or two cases extending to a year;

Reduced the calculated amount of a subsidy, and hence the countervailing duty, in questionable ways not specifically authorized by either the statute or by Federal regulations;

Conducted *ex parte* meetings with foreign representatives at which allegedly confidential information has been submitted to the Treasury Department. The difficulties which domestic petitioners have in rebutting such information is obvious, nor does Treasury verify such information;

Changed rulings without adequate opportunity for interested parties to comment.

Mr. Robert Mundheim, Treasury's General Counsel, who is currently in charge of the administration of the countervailing duty statute, has indicated that he may be prepared to make some changes administratively. We believe, however, that the only way to revitalize thoroughly the statute's administration is to move it out of the Treasury Department.

PROPOSED AMENDMENTS

That is one of our principal recommendations. Where would we put the administering authority? Probably in a restructured and re-named Commerce Department. We understand that the Administration is now considering placing the various foreign trade functions that are scattered throughout the Executive Branch in a revamped Commerce Department. Apparently that could be done by using the President's existing authority and would require little or no new legislation. We would have to know the details of any such change before we could endorse it fully, but in principle we believe that the idea is a good one.

If legislation were required, the trade department bill proposed by Senators Roth and Ribicoff, and co-sponsored by Senators Danforth and Heinz, merits serious consideration.

Our other proposals are contained in Attachment 2 to this testimony. I would like to summarize what they would do:

First, they would revitalize and tighten the administration of the countervailing duty statute by, among other things, setting shorter deadlines, requiring the detailed publication in the Federal Register of reasons for decisions, and requiring periodic public reports about foreign subsidy practices.

Second, they would reduce considerably the administering authority's discretion by, for example, prohibiting deductions from countervailing duties unless those deductions are specifically authorized by law.

Third, they would strip away a lot of the secrecy surrounding countervailing duty proceedings and make the entire process somewhat more formal. For example, they would put strict limits on the submission and use of confidential information, and discourage *ex parte* meetings. Essentially, these amendments would tend to insulate subsidy cases from political pressures and increase the chances that decisions would be based on the merits of a case.

Fourth, they would provide a more certain instrument against the myriad internal subsidies which governments employ. Among these are start-up grants and low-interest loans given under regional development schemes and the covering, out of national treasuries, of losses incurred by state-owned firms.

I am happy to note that the Congress is becoming aware of the problems which concern many of us. Senator Danforth's bill, S. 223, co-sponsored by Senators Bentsen, Moynihan, Packwood, Dole, Roth, Heinz and Wallop of this Committee, is certainly a big step in the right direction. And we anticipate that other legislation will be introduced soon so that additional attention will be devoted to this important subject.

CONCLUSION

In closing I would like to underline a few major points. First, there is widespread concern throughout a number of industries and unions about the subsidies problem. One important way to build support for the "package" of trade agreements and implementing legislation—and to lessen opposition—is to deal with the subsidy problem effectively.

Second, to advocate and carry out effective countermeasures against subsides is to support, not hinder, freer trade. Subsidies distort market decisions and lead to the mis-allocation of resources. Thus they negate the very benefits which freer trade confers. In saying this we recognize, of course, that no Subsidies Code and no implementing legislation will abolish all subsidy practices. We believe, however, that it should be possible at least to reduce some of the more important ones.

Third, as I previously stated, our proposals are not contrary in any important respect to the Subsidies Code negotiated at Geneva. We do not seek to overturn the accomplishments of Geneva, but to implement them effectively.

Finally, as we all recognize, we are entering an unusual legislative situation. "Unusual" because the Administration's trade package must be voted up or down and cannot be amended. This means, of course, that all of the negotiating and bargaining which normally takes place after a bill is introduced must, in this case, take place before the introduction of the legislation. That, in turn, places a premium on the close scrutiny of proposals before they are formally received. We have no doubt that the Members of this Committee and the staff will give these matters their careful attention.

Thank you very much, Mr. Chairman, for this opportunity to present our views.

ATTACHMENT 1.—ENDORSING ORGANIZATIONS

Amalgamated Clothing & Textile Workers Union, AFL–CIO
American Apparel Manufacturers Association
American Footwear Industries Association
American Pipe Fittings Association
American Textile Manufacturers Institute
American Yarn Spinners Association
Bicycle Manufacturers Association
Cast Iron Soil Pipe Institute
Clothing Manufacturers Association
Copper and Brass Fabricators Council, Inc.
Industrial Union Department, AFL–CIO
International Ladies Garment Workers Union, AFL–CIO
International Leather Goods, Plastics & Novelty Workers Union, AFL–CIO
Lead-Zinc Producers Committee
Luggage & Leather Goods Manufacturers of America, Inc.
Man-Made Fiber Producers Association
Metal Cookware Manufacturers Association
National Association of Chain Manufacturers
National Association of Hosiery Manufacturers
National Cotton Council
National Federation of Fishermen
National Handbag Association
National Knitted Outerwear Association
National Knitwear Association
National Outerwear & Sportswear Association
Northern Textile Association
Retail Clerks International Union, AFL–CIO–CLC
Scale Manufacturers Association, Inc.
Synthetic Organic Chemical Manufacturers Association
Tanners Council of America, Inc.
Textile Distributors Association
Valve Manufacturers Association
Work Glove Manufacturers Association

ATTACHMENT 2.—PROPOSED AMENDMENTS TO THE COUNTERVAILING DUTY STATUTE

1. The term "bounty or grant" should be defined in the statute (it is not at this time) so as to reinforce the broad scope of that term and reduce the administering agency's current latitude for interpretation.

2. The administering agency should be required to prepare a report every six months on foreign subsidy practices. The report should include, but not be limited to, direct and indirect payments, remissions of charges, the furnishing of

goods or services at less than market value, loans, credits, loan guarantees, currency retention schemes, the remission of taxes, and the operation of government-owned or controlled enterprises at a loss over a significant period of time. Enactment of such an amendment would increase the ability of interested parties to exercise their rights under the law and also would reinforce a broad definition of the term "bounty or grant." At this time Treasury does not initiate countervailing duty actions when it has specific information, nor does it advise interested parties of such information.

3. The administering agency should be required to investigate and take appropriate action against a subsidy, even though there is no complaint, discovered during the course of an investigation of another subsidy. American petitioners are often unaware of foreign subsidy practices, and at present Treasury generally does not act unless a specific complaint is received.

4. The administering agency should be prohibited from making any deductions from any countervailing duty assessed for any items unless such deductions are specifically authorized by law. Treasury now makes various deductions from countervailing duties for which there is no clear authority.

5. In the case of start-up or expansion grants, the administering agency should collect the countervailing duty over a reasonably short period of time, say, a time equal to the amortization period of the foreign plant or equipment in question. This would prevent the collection of the duty over, say, the actual life of the plant in which case the duty does not effectively offset the subsidy.

6. The administering agency should be required to verify information submitted by foreign governments in subsidy cases. Treasury now takes this information, often of questionable accuracy or completeness, at face value.

7. Confidentiality: The administering agency should be required to:

(a) Make public all information provided in an investigation or consultation with a foreign government unless there is a clear showing of national security or business confidentiality and this showing is explained on the public record.

(b) Summarize on the public record national security or business confidential information if it is to be considered.

(c) Give advance notice of all consultations to affected domestic interests and an opportunity to those interests to participate, except in the most unusual cases.

(d) Discourage ex parte meetings between it and interested parties, domestic and foreign.

(e) Maintain and make public on request a record of all meetings between the administering agency and parties to an investigation.

(f) Refuse to accept a submission by a party to an investigation unless it is simultaneously served on the other parties affected; in the case of a confidential submission, a summary should be simultaneously served.

8. Trade unions, trade associations and other organizations representing American industry and labor should be allowed to seek judicial review of determinations by the administering agency. The current law allows such organizations to act as complainants, but gives only manufacturers, producers and wholesalers the right of judicial review.

The right of judicial review should extend to, but not be limited to (a) a negative decision (i.e., lack of existence of a subsidy), (b) the amount of duty imposed; (c) any mutually agreed solution between the United States and a foreign party whereby an investigation is terminated or suspended.

9. The liquidation of import entries should be suspended as soon as the administering agency makes a preliminary determination that a subsidy is being paid. When a final determination is made that a subsidy is being paid, countervailing duties should be assessed on all merchandise entered after the date of the original complaint. The Antidumping Act contains a similar provision.

10. The administering agency, after making a determination in a subsidy case, should be required to publish a detailed report setting forth its reasons in the Federal Register. Treasury does not now do this.

11. There should be no amendment requiring an injury test for dutiable products. For more than 80 years the countervailing duty law has embodied the principle that subsidization of such products constitutes a per se violation of fair trade concepts and that injury is to be presumed, as in the case of per se violations of domestic antitrust laws. That principle is as valid today as it has ever been.

If it proves necessary for the United States to agree to an injury test in the course of multilateral negotiation of a subsidies code, the agreed provision must permit the adoption of an injury test that would meet the requirements of simplicity, certainty and low threshold.[1]

12. If an injury test is required, it is essential that U.S. petitioners be protected from frequent review of injury determinations. Normally, there should be no such review in less than three years. To obtain a review in a shorter period of time a directly interested party should be required to demonstrate positively that no evidence of injury exists and that there is no likelihood that injury will recur in the foreseeable future.

13. Section I A (1) of the Code states that "an investigation to determine the existence, degree and effect of any alleged subsidy shall normally be initiated upon a written request *by or on behalf of* the industry affected." It is necessary to clarify the meaning of the phrase "by or on behalf of" to ensure that it includes companies, unions, trade associations or any other interested entity.

14. The administering agency should be required to publish intermediate findings at the end of three months and a final determination at the end of six months from the date the petition is filed. This would halve the time limits in the existing statutory provision and would take cognizance of the fact that Treasury rarely begins comprehensive analysis of countervailing duty complaints during the first six months of the presently allowed one-year processing period.

15. Section I B of the Code authorizes signatories to request information from other signatories about their subsidy practices. Domestic parties at interest should be able to ensure that the U.S. Government requests such information, or if the Government fails to do so, the administering agency should be required to state its reasons for denying the request in the *Federal Register*.

16. There should be a time limit on the processing of Section 301 cases and a requirement to take retaliatory action in those cases when foreign subsidies cause trade diversion in the U.S. market or in foreign markets or when those subsidies cause the loss of U.S. export sales. Section 301 of the 1974 Trade Act currently does not have a statutory time limit, nor does it actually require the President to use his broad authority to take retaliatory action against subsidy-induced trade diversion and export loss.

[From Dun's Review, August 1978]

ATTACHMENT 3.—EUROPE'S SUBSIDY SPREE

The startling growth of government subsidies to industry in Western Europe, which is making it increasingly tough for American companies to compete, has become a major issue between the U.S. and the European Economic Community. The Americans finally wrung some concessions on subsidies out of the EEC in recent trade negotiations. But it remains to be seen whether or not they will be effective.

Of course, many basic industries in Europe have been state-owned for years. But government involvement has spread pervasively in the past two years—through loans, grants, equity purchases and a host of other aids. In large part, these are job-saving measures, growing out of deep European concern over high and rising unemployment. There are currently 5.8 million jobless (5.5% of the work force) in the EEC alone, and most forecasts suggest that without more vigorous economic growth, joblessness will keep rising well into the 1980s.

Compounding the unemployment problem, European industry is heavily burdened with overcapacity, and plant and equipment generally is less efficient than that in the U.S. and Japan. Left alone, many companies would collapse and consign still more workers to the unemployment lines. But government leaders are under strong political pressure to preserve jobs. And most of them take the view that whatever the marketplace logic, permitting companies employing thousands

[1] The following organisations believe that the above statement implies a willingness to accept some form of injury test. They believe that the countervailing duty statute should have no requirement for an injury test of any kind: Amalgamated Clothing & Textile Workers Union, AFL–CIO; American Apparel Manufacturers Assn.; American Yarn Spinners Assn.; Clothing Manufacturers Assn.; Industrial Union Dept., AFL–CIO; Int'l Ladies Garment Workers Union, AFL–CIO; Int'l Leather Goods, Plastics & Novelty Workers Union, AFL–CIO; Man-Made Fiber Producers Assn.; National Cotton Council; National Handbag Assn.; National Knitted Outerwear Assn.; National Kitwear Assn.; National Outerwear & Sportswear Assn.; Northern Textile Assn.; Textile Distributors Assn.; Work Glove Mfgrs. Assn.; American Textile Manufacturers Institute; Luggage & Leather Goods Mfgrs. of America; National Federation of Fishermen.

of workers to fold is simply not justifiable. Hence, while they are helping to streamline outdated plant and slim down work forces to some extent, instances where they are just shoring up sick industries keep multiplying.

Subsidization is most obvious in three sectors with massive overcapacity. In steel and shipbuilding, control of many formerly private companies is passing into state hands, with most of the remaining firms relying heavily on subsidies to stay in business. And scores of textile and fiber manufacturers, hit by recession and cheap competition from the Far East, are surviving only with government help.

But aid is also pouring into a growing roster of other industries, including pulp and paper, heavy engineering, chemicals, plastics, machine tools, building materials, electronics and even food. Alongside government assistance to hundreds of small and medium-sized firms, major rescue operations are under way in almost every West European country.

SPENDING PROGRAMS

In France the government last year took a one-third share in Dassault, maker of the Mirage jet fighter, and Dassault will probably be merged with state-owned aircraft group Aerospatiale. This spring, the government launched a three-year development program in four industries—drugs, mechanical engineering, farm and food products—to be jointly funded by government and private capital; and it has pledged nearly $1 billion in aid for the pulp and paper industry, despite the refusal of the industry to cooperate in a restructuring program. The government plans to spend nearly $1 billion this year on undisguised job preservation.

Despite huge losses and debts, Italy's giant state holding company, Instituto per la Riconstruzione Industriale (IRI), which has long dominated industry, continues to absorb even more private-sector companies in distress. The government has made new loans to IRI's huge food and confectionery subsidiary, which is deep in the red. Also being bolstered by loans is the mainly privately owned chemicals maker Stonledison SpA, which lost money heavily last year; and the company was dissuaded from laying off 6,000 textile workers by the government, which simply transferred the workers to its own payroll.

In the Netherlands the Dutch government last year handed out subsidies to 38 heavy-engineering companies, 25 textile firms, thirteen building materials and furniture manufacturers and more. It also purchased a controlling interest in the money-losing local subsidiary of AB Volvo, Sweden's leading carmarker. This year, as part of what it admits is the biggest rescue operation since World War II, the government is taking a stake in VMF Stork, the troubled heavy-engineering group, and in a division of a leading shipbuilding firm.

Germany despite its ideological commitment to marketplace disciplines, has always had a sizable public sector, and it is now beefing up government involvement through massive loans. It has earmarked $30 million to help revamp the steel industry in the Saar—plus $100 million more to subsidize nonsteel firms in the area. In the coal industry, on top of $2 billion already spent, it is planning to shell out $290 million a year through 1982 to guarantee investment and jobs. And Germany has a particularly generous program of job subsidization throughout industry.

Britain also is spending heavily on job-saving and on boosting weak but "strategic" industrial sectors. Hundreds of companies are receiving bonuses if they refrain from firing workers or take on new ones. Last year the government nationalized the entire shipbuilding and ship-repair industry. It is also keeping afloat the state-owned British Steel Corp., which lost $1.6 billion last year and is $9.7 billion in debt—and is currently a target of U.S. dumping charges. Meanwhile, the ill-starred, state-controlled British Leyland Corp., which lost $85 million last year has received further state loans and equity capital. Its struggling competitor, Chrysler UK, is also being propped up by state funds in a job-saving move.

Denmark despite high unemployment, has been alone among the Common Market nations in refusing to bolster ailing companies—partly because its industry is fairly efficient and flexible, partly because it simply cannot afford big handouts. As a result, it is urging the EEC Commission, and also its Scandinavian trading partners, to crack down on subsidization.

The Danes complain that their forest products industry was badly hurt last year by government subsidies in Sweden, which enabled the Swedish industry to cut the chipboard prices in Denmark by 20%. (The Swedish government has come up with another $195 million for the timber industry this year.) Similarly, Danish textile makers have suffered from Norway's job-subsidy payments to its textile industry. "Our shirtmaking industry has been wiped out," charges Finn Breitenstein, international economist at the Danish Federation of Industry. Bowing to the competitive pressures for the first time, the Danish government is making a major grant to its only steel company, which is privately owned.

PERPETUATING INEFFICIENCY

The Danes are not the only ones complaining. Businessmen on both sides of the Atlantic believe that subsidization is loading the dice against private companies. American companies in particular, which must compete with subsidized European autos, steel, machine tools and other goods both in the U.S. and abroad, have been crying foul. For large chunks of manufacturing industry that would otherwise have fallen by the wayside are not only surviving, but are being shielded from competition through low subsidized prices that private industry is hard put to match.

While European governments claim that they are primarily helping industries modernize plant and equipment, the consensus among international trade officials is that "restructuring" all too often turns out to be a euphemism for "propping up." Secretary-General Emil van Lennep of the Organization for Economic Cooperation and Development (OECD), which includes most Western nations, says that even when governments originally pump funds into companies to help them reorganize and become more competitive, such programs often fail and the money ends up being used to perpetuate inefficient companies so as to save jobs. This trend, Lennep warns, will eventually make economies less productive and more inflation-prone.

Indeed, European governments are themselves increasingly worried about the huge sums they feel obliged to dole out to save jobs. Says German Economics Minister Otto von Lamsdorf: "Experience shows that measures taken in the name of adjustment aids tend to perpetuate themselves, simply preserving nonviable plant."

Efforts have been made to regulate state aid through the EEC and OECD, but they have not worked out. To start with, the full extent of the subsidies is unknown since governments are adept at disguising them—by calling them regional incentives, say, or farming them out to local governments, which do not have to notify the EEC. "There is no limit to their imagination when it comes to ways of concealing subsidies," sighs one EEC official.

Then there is the difficulty of even defining subsidies. Some are clear-cut enough. But what about regional incentives or government insurance against inflation risk on exports? And what of state loans at "commercial" rates or taking an equity interest in companies? As one trade negotiator says: "You might as well call free school meals an industrial subsidy, since they could reduce pressure for higher wages."

To be sure, there are some signs of progress. For the first time, both the EEC and the OECD are now working up inventories of all types of governmental activity they consider to be subsidies. If member nations can agree on these lists, all subsidies actually being paid out can be catalogued country by country.

Besides that, as noted, the Europeans have made some moves in response to American pressure. In June, most West European governments signed an OECD pledge to curb state support of industry. And in the current Tokyo Round negotiations on global trade liberalization, the EEC Commission agreed to an American demand that it draw up a broad code to restrict member governments subsidizing their exporters.

However, the reality behind these assurances is less encouraging, according to one knowledgeable European trade expert. He agrees that there will likely be a modest improvement in Europe's behavior. "But the European nations adhered to the OECD pledge with major private reservations," he points out "while the EEC Commission has little power to persuade member states to change their ways, however ringing its assurances."

In practice, the trade expert warns, governments will continue to respond above all to the more compelling domestic pressures for job preservation. "So if the U.S. accepts European promises to exercise discipline in subsidies," he believes, "this would be partly a facesaver. And the U.S. team, working at Geneva to meet a midsummer deadline on a broad Tokyo Round agreement, knows it."

—JEAN ROSS-SKINNER

AUGUST 1978

ATTACHMENT 4.—REMARKS PREPARED ON BEHALF OF THE AMERICAN MINING CONGRESS BY CHARLES R. CARLISLE VICE PRESIDENT, ST. JOE MINERALS CORP.

COMPETITIVENESS OF THE U.S. MINERALS INDUSTRIES

Of the 12 materials under study in the Non-Fuel Minerals Policy Review, the United States has large or very large ore deposits in six: copper, lead, zinc, silver, phosphate and iron. Moreover, although it has little bauxite, this country is by far the world's largest producer of aluminum. On behalf of the American Mining Congress this paper addresses the U.S. competitive position in those seven commodities.

Three conclusions emerge:

1. The United States is losing its competitive position in six of the seven, and the position of the seventh, lead, is threatened by proposed, unrealistic EPA and OSHA regulations.

2. The United States is 15 to 50 percent dependent on imports in six of the seven materials. Only in the case of phosphate rock does it have an export surplus, and that surplus is declining as U.S. production increases fail to keep pace with those in the rest of the world. In only two—copper and lead—of the other six materials has it managed to improve, marginally, its position of import dependence; in the case of zinc metal, import dependence it has increased disastrously.

3. To some extent loss of competitive position and increasing import dependence have resulted from what might be considered normal economic and commercial factors. There can be no doubt, however, that intervention in the investment and trade processes by foreign governments, together with policies followed by the U.S. Government, also have been important causes of the increasing difficulties of the U.S. mining and metals industries.

Table 1 (page 3) shows the erosion of America's competitive position in six of the seven commodities from the late 1960's through the mid-1970's.

Table 2 (page 4) indicates the extent to which this country was able to meet its needs for the seven materials from domestic production in the late 60's, and the extent to which it is able to do so today.

TABLE 1.[1]—CHANGES IN PRODUCTION

[Thousands of short tons]

Commodity	Production: Late 1960's		Production: Mid-1970's		Percent change	
	United States	Rest of World	United States	Rest of World	United States	Rest of World
(ABMS) Aluminum metal	3,440	5,015	4,225	10,400	23	107
(ABMS) Copper metal	1,320	5,330	1,510	7,115	14	34
(ILZSG) Lead metal	1,070	2,445	1,200	2,645	12	8
(ILZSG) Zinc metal	1,055	3,265	520	3,940	−50	21
(BOM) Phosphate rock	39,580	50,115	47,835	72,335	21	44
(BOM) Iron ore, contained Fe	56,700	360,300	49,100	514,900	−13	43
(BOM) Mine production of silver (Troy ounces)	42,800	251,300	35,800	272,300	−16	8

[1] "Late 1960's" means 1967–69, except 1968–70 for lead and zinc, and 1969–71 for silver. "Mid 1970's" means 1975–77 except 1974–76 for phosphate. "Rest of world" excludes Communist nations for lead and zinc.

Sources: American Bureau of Metal Statistics Year Books, International Lead and Zinc Study Group Statistical Bulletins, and U.S. Bureau of Mines Mineral Commodity Profiles.

TABLE 2.[1]—U.S. PRODUCTION AND DEMAND

[Thousands of short tons]

Commodity	Late 1960's Production	Late 1960's Consumption	Late 1960's Production as percent of consumption	Mid-1970's Production	Mid-1970's Consumption	Mid-1970's Production as percent of consumption
(ABMS) Aluminum metal	3,440	4,460	77	4,225	5,705	72
(ABMS) Copper metal	1,320	1,740	76	1,510	1,905	79
(ILZSG) Lead metal	1,070	1,240	86	1,200	1,380	87
(ILZSG) Zinc metal	1,055	1,290	82	520	1,050	50
(BOM) Phosphate rock	39,580	26,255	151	47,835	34,460	139
(BOM) Iron ore, contained Fe	56,700	83,000	68	49,100	76,800	64
(BOM) Refined silver (Troy ounces)	133,200	140,600	95	102,400	162,000	63

[1] "Late 1960's" means 1967–69, except 1968-70 for lead and zinc, and 1969-71 for silver. "Mid-1970's means 1975-77, except 1974-76 for phosphate. "Rest of world" excludes Communist nations for lead and zinc.

Sources: American Bureau of Metal Statistics Year Books, International Lead and Zinc Study Group Statistical Bulletins, and U.S. Bureau of Mines Mineral Commodity Profiles.

The rest of this paper attempts to address the eight questions raised by the Policy Review staff about the competitiveness of the U.S. mining and metals industries. For the most part the comments are general since lack of time has prevented the gathering of up-to-date data, and, in any case, most of the data probably are alreary available in Washington, especially in the Bureau of Mines and at the Departments of State, Treasury and Commerce.

The American Mining Congress, however, urges all of those working on the Policy Review *not* to issue an encyclopedic report in which facts obscure analysis and judgment. While data, possibly some new data, are needed, they should be used sparingly.

In the AMC's opinion what really needs to be done comes down to two tasks: (1) careful selection and analysis of the facts already at hand; and (2) resolution of admittedly difficult policy issues centering on the desirability and means of strengthening the American mining and metals industries.

ECONOMIC AND COMMERCIAL FACTORS

As was noted earlier, mining and metals facilities in the United States are disadvantaged to some extent by the economic factors that must be expected in any industry.

American iron ore production is being hampered, for example, by the existence of better ore bodies in such countries as Canada, Brazil and Australia. There are also transportation problems. In many cases ore can be taken from overseas mines to overseas mills in mammoth freights traveling between large, deep-water ports that this country lacks. In the United States there is heavy dependence on more expensive rail transport. It has been estimated, for example, that shipping iron ore from Minnesota to Pittsburgh may cost three times as much as shipping it from Brazil to Japan.

Morocco has some advantage over the United States in its possession of even larger reserves of phosphate rock than this country has, and the Moroccan reserves may be of modestly better quality.

U.S. aluminum producers are not helped by the fact that, with few exceptions, America's aluminum-bearing deposits cannot be mined as economically as those overseas, and low-cost, assured power supplies are becoming exceedingly difficult to find in the United States. Even so, American and Canadian aluminum producers probably still have the lowest costs in the world, which raises some interesting questions as to why aluminum production has expanded much more rapidly over the past decade outside of North America than in the United States and Canada.

America's reserves of copper, lead, zinc and silver are vast, ranging, according to the Bureau of Mines, from 15 to 25 percent of the world's known reserves in the case of each mineral. It is admittedly difficult to find high-grade ore bodies in the United States although this still happens, witness the relatively recent discovery of a major base metals mine in Wisconsin.

Many of the richer copper, lead, zinc and silver ore bodies around the world are in remote areas where infra-structure must be built or where a harsh climate makes mining difficult and expensive. American mines are close to good transportation and in the largest national market in the world.

American copper producers believe that were it not for their heavy environmental expenditures their costs would be in the range of those in Chile, today probably the world's lowest cost copper producer. Zinc producers are hampered by older smelters, less efficient than plants constructed during the past decade in Japan and Europe. Interestingly, zinc producers in those countries must rely more heavily then do American producers on imported zinc concentrates, but they have managed to build new zinc plants while this country has not.

The United States has a strong lead industry, and the "New Lead Belt" in southeastern Missouri has some of the most efficient mines in the world. American lead producers are competitive with producers in foreign countries, although the U.S. ability to compete soon may be seriously undercut by new EPA and OSHA regulations.

Finally, the raising of wage rates around the world, especially in Western Europe and Japan, and the devaluation of the dollar against many of the world's currencies should encourage, other things being equal, investment in American mines and metal plants. Thus, it seems clear that normal commercial factors do not begin to explain fully the lagging performance of the U.S. mining and metals industries.

GOVERNMENTAL ACTIONS

It seems equally clear that governmental actions and policies, both abroad and in this country, are having a major influence on the relative performances of American and foreign mining and metals industries.

Those actions and policies can be categorized as follows: (1) direct subsidies, such as grants, loans, loan guarantees and low-interest loans; (2) state ownership or control with the state periodically injecting funds into an unprofitable enterprise or allowing a company to earn lower profits than private investors and managers could accept; (3) the channeling of large credits to strategic industries under a system which permits companies to carry heavy debt loads; (4) special tax concessions; (5) formal or informal trade restrictions; and (6) more rigorous environmental protection laws and regulations in this country than abroad.

What follows is a fairly brief description of how governmental actions in those various categories have adversely affected America's mining and metals industries. The description is intended to be illustrative rather than comprehensive for information on such a sweeping subject can never be complete nor, for that matter, fully accurate for laws and regulations are changing constantly.

Subsidies.—Central government subsidization of private enterprises is pervasive. Among the major countries only the U.S. Government does not have a large-scale, continuing program.

In Europe the European Economic Commission operates a regional aid scheme which distributes hundreds of millions of dollars in assistance annually; Britain, for example, received 1.2 billion pounds sterling in grants and loans during the first four years of its membership in the EEC, according to an article in The Economist. In addition, the European Coal and Steel Community grants assistance to the coal and steel industries and national governments have their own programs.

A survey undertaken five years ago of subsidy practices found that virtually all of the lead and zinc smelters constructed or expanded in the late 60's and early 70's in the EEC and Canada were built in development areas where governmental assistance applied. For example, the Netherlands Government is believed to have given a subsidy of over $6 million to a new zinc smelter in that country. And in the first four years, through 1972, of a Canadian Government regional assistance program over $26 million was given to several base metal facilities and to an aluminum plant. Subsequently, in June 1974 the Canadian Government annouced it was investing $16.7 million in the opening of a lead-zinc mine on Baffin Island, according to the Western Miner.

Again, Italy has an extensive program to assist the southern part of the country (the Mezzogiorno) where lead and zinc production has been expanded. Spain also has apparently provided assistance to its base metals industry under a policy of encouraging industralization of certain areas of Spain. Elsewhere, construction of a $500 million aluminum plant began in Ireland in June with over $30 million in grants and interest subsidies being given by the Irish Government, according to American Metal Market.

Japanese Government assistance to its mining and metals industries apparently has been mainly in the form of encouraging and underwriting massive loans and working with groups of companies on investment plans. The Ministry of International Trade and Industry—MITI—was reported this summer, however, to be calling for over $300 million in governmental assistance to the nonferrous industry.

Foreign steel producers probably have received as much subsidy assistance as any industry, and this, of course, has both direct and indirect effects on iron ore production. The Journal of Commerce reported last February that the Spanish Government was planning to grant over $600 million in long-term, low-interest credits to both the private and public sectors of the Spanish steel industry. And in November 1977 the Swedish Government announced that it was giving about $100 million in loans and credit guarantees to Swedish special steel companies.

Sweden was one of the countries cited by the head of the Krupp steel company, who complained last June of heavy government subsidization of the steel industry in Europe. He was quoted in the Journal of Commerce as saying that there is a "hidden risk that the covering of costs will no longer be the decisive criterion in pricing policy. . . ." Other countries he mentioned were the U.K., Italy, France and Austria.

The Federal Republic of Germany has its own subsidy programs. A recent issue of Dun's Review stated that the FRG was spending $30 million to help the Saar steel industry, and a Stanford Research Institute publication claimed that the government had earmarked $6.5 million to help two West German firms explore on the seabed.

State ownership.—It is increasingly recognized that goverments, in effect, grant subsidies when they pump public funds into unprofitable state-owned companies or when they permit those companies to earn year after year profits that would not meet the needs of firms owned by private shareholders. The reason that such phenomena occur, of course, is that governments are motivated by other than commercial considerations. Thus, they construct facilities which private enterprise would not construct, and frequently fail to adjust production and prices to market conditions.

No American industry probably has been impacted more by the practices of state ownership than, again, the steel industry. The case of British Steel, whose current losses are around $750 million a year, is so well known that additional comment is not necessary.

Unfortunately, British Steel is not the only example. Italsider, an Italian state-controlled company, lost $465 million in 1977, according to American Metal Market. In Spain the government has embarked on a program to nationalize the Altos Hornos steel firm, which reportedly has been losing money. When nationalization is complete the Spanish Government will control two steel firms (the other also in financial difficulty), about 75 percent of Spanish capacity.

The Swedish Government is also heavily involved in steel making. Late last year the Wall Street Journal announced a plan to merge the nation's largest steel producers into a single company. The new company, according to the article, was expected to operate at a loss for several years. And a May 1978 article in the New York Times quoted an official of a Swedish state holding company as saying: "The largest state company controls the iron ore mines. It loses tremendous sums and it might be good management to close it up. But the Government could not handle it politically * * *"

One more example. The Wall street Journal on September 18, 1978 carried an article saying that the French Government had initiated a "rescue plan for its troubled steel industry" that "would make the government, in effect, the majority steelholder of French steel industry has lost $3 billion in the last four years, and the government since World War II "has pumped billions of dollars into the steel industry in futile efforts to make it solvent."

State ownership and the distortions it brings to investment and trade patterns is widespread, of course, throughout the world's mining and metals industries.

Government-controlled copper firms in several African and Latin American nations have been reluctant to reduce copper production, despite weak market conditions, presumably for balance-of-payments and employment reasons.

U.S. phosphate producers must compete with a state-controlled company in Morocco, while American aluminum producers are confronted by government-owned companies in Norway and a number of developing countries. In Finland a state-owned company controls all nonferrous metal production, while in Spain and Italy a large part of the nonferrous industry is under the government.

The Bolivian Government has recently announced that it plans to construct a lead and silver smelter. In Ireland the government is encouraging the construction of a zinc smelter in which it plans to hold a major interest.

All mining and metals production is controlled by government, of course, in the socialist countries. Poland has been rapidly expanding its copper industry, and the Soviet Union, striving for self-sufficiency, has substantially increased its production of a number of minerals and metals.

Channeling of credits.—No country appears to have employed this device more successfully than Japan. Three U.S. Government documents published in the early 70's described in some detail how the Japanese handle this matter.

Basically, there is a "participatory partnership" between government and key industries, including the natural resources industry. Japanese companies in such industries are in close contact with each other and with their government; goals are set by consensus.

In turn, the Japanese Government responds in a variety of ways with the Bank of Japan giving guidance to the nation's leading banks. In effect, the Bank of Japan becomes the implicit guarantor of the debt of major Japanese companies.

All of this has made it possible for Japanese firms to carry debt loads that are virtually unheard of in this country. Typically, Japanese companies often have debt-equity ratios of around 4–1, while most American corporations hesitate to go over 0.5–1.

Thus, debt financing that would be unavailable to American firms has been available to Japanese companies. The high debt loads, in turn, mean that even if margins on sales are slim, satisfactory returns on shareholders' equity can be maintained. Moreover, high debt service changes contribute to high fixed costs, which encourage firms to operate at full capacity and to export.

Tax concessions.—Studies carried out by, among others, the U.S. Treasury have shown that foreign tax systems usually allow quicker capital recovery than does the American tax code. The most common device is extremely rapid depreciation, sometimes in a year or two, thereby reducing profits and taxes, but not cash flow.

Two tax systems are particularly worth noting because of their effects on the world's mining and metals industries. For a number of years Ireland has granted for 15 consecutive years 100 percent relief from income and corporate profits taxes on profits attributable to export trade in Irish manufactured goods, including, apparently, Irish mine exports. This tax relief probably has given considerable encouragement to the development of one of the largest base-metal mines in Europe.

Canada had a system for over 30 years, ending in 1973, which allowed new mines to be exempted from federal taxes for the first three years after production began. The system allowed early cash flow to be devoted to debt repayment and improved discounted-cash-flow returns. It undoubtedly encouraged the rapid growth of Canadian mining, for example, of zinc

Trade restrictions.—There are three great markets in the world: the United States, the EEC and Japan. The United States has lower duties on lead, zinc, copper and aluminum than either Japan or the EEC. (Moreover, there are indications that if the initial tariff offers made at the Geneva trade talks were accepted, this unfair tariff arrangement would be perpetuated.)

Apart from tariffs, there are old school relationships in Europe and even more formidable obstacles in Japan which restrict exports into these markets. Entry into the Japanese market is made difficult by, for example, the need to work through the Japanese trading companies and a variety of nontariff barriers, which have been much discussed by the U.S. press.

Nor do the Japanese hesitate to act quickly to protect their metal producers when markets are soft. According to the Mining Journal the Japanese Government established tariff quotas for aluminum ingots last April 1. In the United States the appeals of American zinc producers for a similar system were turned down by the International Trade Commission after lengthy hearings. Copper producers' requests for quotas have been approved by the ITC, but the President has yet to act on the ITC recommendation.

All of this means that for metals the American market is the only truly open market of the three major markets. Thus, when world markets become soft surplus metal at distress prices becomes a major problem for U.S. producers.

Environmental protection.—It is understood that the Policy Review staff intends to give special attention to the effects of environmental and worker protection laws in another part of its work plan. Nonetheless, no discussion of the competitiveness of the American mining and metals industries is complete unless some attention is given to these subjects.

It appears that, by and large, no government in the world has imposed more stringent environmental laws and regulations on its mining and metals industries than has the U.S. Government. In Japan and certain West European countries the environmental protection requirements for new plants may be as stringent as they are here. But it is not believed that those governments have been nearly as severe as the American in requiring older plants to meet exacting requirements. And the environmental requirements in a number of developing countries are apparently lax by U.S. standards.

What all of this means, of course, is that American firms which are trying to sell internationally-traded commodities have had technological requirements and costs imposed upon them which their foreign competitors frequently do not have to meet.

Both the American steel and copper industries have spent hundreds of millions in recent years on environmental protection and the end is not in sight. Thus far the lead industry's environmental expenditures have been moderate, but EPA is now proposing an ambient air lead standard which the industry lacks the technology to meet. Similarly, OSHA is proposing unrealistic and extremely costly in-plant lead standards. Combined, the EPA and OSHA standards threaten to close down a large part of the American lead industry.

U.S. phosphate producers are also subject to stringent EPA standards. It has been estimated that those standards add 20 percent to the capital costs of a new phosphate project and that the resulting annual operating costs equal 12–15 percent of the capital costs.

Finally, American aluminum producers are confronting a new, exceedingly stringent ambient air standard for fluorine and very difficult water quality standards. Unless some relief is granted, these standards are likely to be one more deterrent to the construction of new aluminum plants in this country.

CONCLUSION

The American Mining Congress does not contend, of course, that all of the competitive problems of the American mining and metals industries stem from the actions and failures of governments, American and foreign.

The AMC does believe, however, that governmental policies and programs are major determinants of competitive position and that American companies have been seriously disadvantaged by the acts of governments. It hopes that the U.S. Government will recognize this fact and take steps soon to redress the competitive imbalance.

Senator HEINZ. Would you please identify yourself for the record? Proceed.

STATEMENT OF SAUL L. SHERMAN, RIVKIN, SHERMAN & LEVY, ON BEHALF OF THE JOINT INDUSTRY WORKING GROUP

Mr. SHERMAN. My name is Saul L. Sherman, and I am testifying here this morning with regard to the valuation agreement which has emerged from the Geneva negotiations. I am speaking on behalf of the ad hoc Joint Industry Working Group consisting of 16 trade associations including the Air Transport Association, American Electronics Association, American Importers Association, American Paper Institute, American Retail Federation, the Chamber of Commerce of the United States, the Cigar Association of America, Computer &

42-978—1979——7

Business Equipment Manufacturers Association, the American Flagship Operators, the Electronics Industry Association, the Foreign Trade Association of Southern California, the Imported Hardware Products Association, the Motor Vehicles Manufacturing Association, the National Committee on International Trade Documentation, the Scientific Apparatus Makers Association, and the United States Council of the International Chamber of Commerce.

We are filing a written statement and I will speak to that briefly and extemporaneously, and of course, we will welcome questions from any member of the subcommittee who cares to ask.

I would like to first express the thanks of our group for the opportunities that have been afforded us during the course of the negotiations and even before, as far back as 1972 at hearings of the then-Tariff Commission to participate in the evolution of what bids fair to become the first uniform international standard for valuation in the customs field.

The subject is an unglamorous one. It tends to be dull and technical and not very widely known. At the same time, there are many in the business world who believe that it may be, as a practical matter, one of the most important results to emerge from the Geneva negotiations because it affects the daily grist and run of the mill as imports and exports flow back and forth between the countries and it does not apply only to serious problems that arise as a policy matter in particular industries and at particular times and places.

One of our members is fond of quoting a statement in a book about the tariff law written back in 1923 by a Mr. Levitt who said, "Let me but write the administrative act, and I care not who sets the rates of duties." I think that the subject of valuation is a kind of administrative problem that can be lost in obscurity and have tremendous commercial impact on the movement of trade.

Prior to this time and up through the present, the United States has had a unique valuation system for its customs operation. Most of the rest of the world is on the so-called Brussels Definition of Value, which is basically a European system, but it has been adopted widely in the Far East, South American, and around the world generally.

Canada, like the United States, has remained outside of that system and has its own system. I might state preliminarily that our group is quite concerned about reports we have heard that the Canadians are reluctant to join in this agreement and we feel that that would present serious problems to American exporters and careful consideration to that problem, if it should become one, should be given by the subcommittee.

The basic idea of this agreement is that the subject of valuation, which has been a matter for each nation to deal with on its own in the past, should now, for the first time, become a subject which is regulated by international agreement so that we all have the same approach to valuation.

I should explain, perhaps, that we are not talking about uniform duties for a particular product nor are we talking, necessarily, about uniform values from country to country because the value of a particular item, if you would just stop to think about it, will often be different from day to day and from place to place.

Therefore, all we can expect in the way of uniformity in this area is that all of the countries will apply to all merchandise the same methods of valuation, the same approach to arriving at value.

Of course, value is quite fundamental in arriving at a duty that is paid on a great many products because typically tariffs are expressed as a percentage rate, ad valorem—i.e., a percentage of the value, and if, for example, a trading partner of ours were to cut a tariff rate in a multilateral negotiation such as this and then make a domestic change in its valuation law so the value of a lot of products were to go up, then the change in the value could balance out and negate in whole or in part the effect of the change in duty rates.

That is why the proposal has been made and has been accepted in Geneva to have a uniform approach from nation to nation to the question of valuation.

The code is essentially designed to be neutral in the sense that it is not proexport, proimport, protrade or antitrade. It is meant to smooth the flow of trade to eliminate mechanical barriers and to provide predictability and simplicity which will mean, among other things we hope, speedier determination of customs values and therefore of the amount of duty that is due on particular importations.

I think that we can very loosely and broadly divide the subject matter the agreement deals with into the easy cases and the hard cases. The bulk of the customs transactions are relatively easy and the trick is to handle them as quickly and smoothly as they ought to be handled.

On that subject, the code that has emerged from Geneva has adopted the concept of transaction value which is, very simply, that duty value, customs value, should be based upon the invoice price agreed upon between the parties to that transaction unless there is a very strong reason to depart from that approach.

It may sound as obvious as anything can be, and it is so obvious that, as a practical matter, most Customs administrations have had to adopt that approach. But, in fact, nobody's law—including our own, but also including the Brussels Definition and various others, has ever specifically and expressly said that that is the norm, that is the starting point, and you should depart from it as little as possible.

The more difficult cases derived from the question, in the case of related parties, so-called. There in the transaction, for example, between a parent and a subsidiary, serious questions can sometimes be raised as to whether the price is a realistic market price or one set for the convenience of the related parties. When we have that problem, a synthetic price has to be devised unless there is an exact parallel transaction between unrelated parties.

In addition, there is a problem area known as assist, and also touching the subject of royalties, which are payments or transfers of one kind or another between the importer and the exporter which are not included in the invoice price but do contribute to the manufacture of the product and these are permitted to be added to the dutiable value, in some cases, but not in others. The subject is a very intricate one. It was taken up only very late in the day in Geneva. The results, in our view, require not only implementation but clarification.

Turning in the last few moments left to the subject of implementation, it is a premise of the approach to valuation that the agreement emerging from Geneva is to replace the domestic law in this country and in others. And particularly because we feel that the greatest benefits to be derived by American business from this agreement is on the export side, we feel that it is particularly important that we set a good example by the implementation that we give in this country, so that we can be on strong ground in expecting others to live up to their part of the bargain.

In particular, that means, in our view, that a maximum degree of precision should be included in the legislation and the minimum should be left to administrative discretion, because it is administrative discretion, in other countries particularly, that makes us nervous and leaves the door open to the possibility of arbitrary increases in dutiable value, and therefore in duty, in other countries.

I have not mentioned——

Senator RIBICOFF (presiding). Mr. Sherman, your time has expired. We started late because of votes and there is a crowded witness list and I would hope that you would put the rest of your statement in the record. We do not want to terminate you, but in fairness to all the witnesses, we do want to give them an opportunity.

Your entire statement will be put in the record.

Do you have any questions, Senator Roth?

Senator ROTH. No.

[The prepared statement of Mr. Sherman follows:]

STATEMENT OF THE JOINT INDUSTRY WORKING GROUP—CUSTOMS VALUATION

Mr. Chairman, Senators Good morning. My name is Saul L. Sherman and I am appearing here on behalf of the Joint Industry Working Group, an ad hoc coalition interested in the subject of Customs valuation, both from the point of view of exporting and importing. Our testimony will be directed to the Customs Valuation Agreement which has emerged from the Geneva Multilateral Trade Negotiations.

The Joint Industry Working Group is composed of the following associations and the businesses they represent:

1. The Air Transport Association of America, which represents nearly all scheduled airlines of the United States.

2. The American Electronics Association, which has over 900 high technology and electronics companies. Its members are mostly small to medium in size, with two-thirds of its members employing less than 200 employees.

3. The American Importers Association, representing over 1,100 companies, mostly small to medium in size, plus 150 customs brokers, attorneys and banks.

4. The American Paper Institute, a national trade association of the pulp, paper and paperboard industry. Its members produce more than 90% of the nation's output of these products. The U.S. paper industry operates in all States of the Union employing over 700,000 people.

5. The American Retail Federation, an umbrella organization encompassing thirty national and fifty state retail associations that represent more than one million retail establishments with over 13,000,000 employees.

6. The Chamber of Commerce of the United States, representing 68,000 companies and 4,000 state and local Chambers of Commerce.

7. The Cigar Association of America, which includes 75 percent of all U.S. cigar sales and major cigar tobacco leaf dealers.

8. The Computer & Business Equipment Manufacturers Association, including over forty members with 1,000,000 employees and $35 billion in worldwide revenues. Members range from the smallest to the largest in the industry.

9. The Council of American-Flag Ship Operators, which represents the interests of the American liner industry.

10. The Electronic Industries Association; its 287 member companies, which range in size from some of the very largest American businesses to manufacturers in the $25–50 million annual sales range, have plants in every State in the Union.

11. The Foreign Trade Association of Southern California, which represents 450 firms in Southern California in the import-export trade.

12. The Imported Hardwood Products Association, an international association of 250 importers, suppliers and allied industry members. Members handle 75 percent of all imported hardwood products and range in size from small private businesses to the largest in the industry.

13. The Motor Vehicle Manufacturers Association, whose eleven members produce 99% of all U.S.-made motor vehicles.

14. The National Committee on International Trade Documentation, which includes many of the major U.S. industrial and service companies.

15. The Scientific Apparatus Makers Association, manufacturers and distributors of scientific, industrial and medical instrumentation and related equipment.

16. The U.S. Council of the International Chamber of Commerce, a business policy-making organization which represents and serves the interests of several hundred multi-national corporations before relevant national and international authorities.

SUMMARY OF TESTIMONY

The Valuation Agreement does a good job on a difficult subject. Handled badly, the valuation processs could result in abuses which would undo the benefits of many of the tariff reductions agreed upon. The subject of valuation is unglamorous, relatively uncontroversial, and yet of great day-to-day importance to the smooth flow of international trade.

The Agreement will benefit our exports particularly. It will require major changes in other nations' value systems. The relatively smaller changes required in our domestic laws will alleviate numerous problems and simplify many importers' operations. It will lend added predictability to duty assessments. The Agreement will require elimination of American Selling Price valuation, but the controversy on this subject now appears to center on the compensation to be received in return for abandoning ASP, not on the question of whether to eliminate ASP.

Canadian recalcitrance may present a serious problem, since the basic premise of the Valuation Agreement is that at least all of the major market economy countries will adopt the uniform international standard laid down in the Agreement. If Canada does not adopt the Agreement, appropriate provisions should be considered for inclusion in the implementing legislation.

A key feature of the Agreement is that it seeks to deny customs officials leeway that would permit increases in duty value which could adversely affect our exports. By the same token, our domestic implementation should be legislative, with a minimum left to administrative discretion or regulations. Likewise, the overly broad valuation mandate of Section 500 ("all reasonable ways and means") must be repealed.

In dealing with the difficult and complex subjects of royalties and assists (production aids furnished by the importer), the Agreement and its Notes require not only implementation but also clarification.

On the vital subject of dispute prevention and resolution, implementing legislation is needed to assist American exporters by affording United States government assistance in training foreign customs officials and in invoking the international dispute resolution machinery provided for in the Agreement.

STATEMENT

The Joint Industry Working Group supports the Valuation Agreement—we think that all in all a remarkably good job was done in Geneva on this subject, even though there are a few problems on which the Agreement has not accomplished all we had hoped for. Valuation is hardly a glamorous subject, but it is one that—unlike dumping or subsidies or safeguards—affects the majority of day-in-day-out import and export transactions. Many knowledgeable people in the business community regard the Valuation Agreement as a sleeper which will do more than any of the other MTN agreements to smooth the workaday flow of trade. It is perhaps indicative that, as far as we know, this is the only MTN agreement for which there is a specific ad hoc business group concerned with its development.

Most tariffs are expressed as a percentage—10 percent or 20 percent, or whatever—of the value of the merchandise. If the rate of duty is reduced but the duty value goes up, an importer could find himself paying the same duty as before despite a supposed tariff reduction. Hence, the concern of the international community about the subject of valuation. In addition, the complexities, uncertainties and delays which are sometimes involved in valuation problems can act as a serious non-tariff barrier to trade. If an importer does not know what his duty assessment will be until after he resells his merchandise, he may be forced to assume the worst, and the commercial impact in the marketplace may be the same as if a higher rate of duty had been in effect.

The prominence of the subject of valuation in the Tokyo Round negotiations stems partly from the fact that American Selling Price (ASP), a trade barrier which particularly incensed some of our trading partners in previous negotiations, takes the form of a valuation provision. Under ASP, duty value is based not on prices in the import market but on the price of the competing domestic product—in other words, the domestic manufacturer sets the duty value for his import competition! The Kennedy Round side-agreement designed to eliminate ASP was not presented to the Congress and so did not take effect. In the Tokyo Round the elimination of ASP has been accepted in principle by our negotiators, and by the American chemical industry, for whose benefit it was originally enacted in 1921; the controversy has centered around the alternatives and the compensation to be received in return by way of duty rate increases and otherwise. It is to be emphasized that the Valuation Agreement aspect of the ASP problem is not controversial—for no one has ever proposed seriously that ASP be made a part of a world-wide system of valuation to be used by all countries.

The essence of the Agreement is reciprocity, at least among the developed nations. To get the valuation benefits we seek for our exports, we must agree to apply the Agreement ourselves. Indeed, the basic premise of the Geneva negotiations on valuation was that each signatory would in the process have the same rules applied to its exports as to its imports. The awareness that each major signatory would have this balanced interest was largely responsible for the success of the negotiations. In this connection, a word should be said about the great importance of Canadian accession to the Valuation Agreement. Canada has been something of a maverick in the field of customs valuation. Indeed, Canada over a century ago adopted some of the features of then current United States law and developed them into a system that is often a serious deterrent to our exports. We understand that Canada is in the somewhat anomalous position of expecting to receive the benefits of the code while still hesitating to adopt the Agreement in Canadian law. In view of the large volume of our trade with Canada, the American business community could not view with equanimity Canadian abstention or major reservations.

Two further observations about the course of the negotiations in Geneva on value: The first is that we went into the negotiations as virtually a minority of one, confronting a world which had by and large adopted the Brussels Definition of Value (BDV). We came out with a system much closer to the best of existing United States law than to the BDV. The result may properly be considered a major success in the negotiations for the United States delegation. Second, the thing we objected to most in other countries' valuation systems was the discretion extended to customs authorities to raise duties arbitrarily by raising duty valuations arbitrarily—especially the so-called uplifts. One of the key features of the system we espoused and secured in the Geneva negotiations was to minimize administrative discretion and keep valuation subject to relatively tight control. Thus, in terms of implementation, our old law on customs valuation must be repealed, the new law which will replace it will not be drastically different from the mainstream of our existing valuation law, and our new provision must take the form of Congressional legislation, with less rather than more left to administrative regulation or discretion.

This is not the occasion for a detailed review of the substance of the Agreement, but a few essentials regarding the problem, the objectives, and the solutions adopted should be mentioned.

1. A moment's reflection will make it obvious that the same merchandise will very likely have different values at different times and places, or in different circumstances. There is no one right value for an article, even at a given time and place, nor is there one right way to arrive at a value. The valuation problem is thus inherently complex and difficult.

2. The Agreement does not and could not realistically seek to arrive at uniform duties or even uniform values for a given article in all countries or in all transactions. The Agreement seeks only to establish a uniform method of arriving at

dutiable value; and even this uniform approach lays down a series of alternatives, to be applied in sequence until a proper fit is obtained, since no single method fits every situation.

3. The Agreement is trade neutral overall. With few exceptions, the changes made may result in higher or lower value—the key objectives have been simplicity and predictability and a factual basis in real market transactions. For example, today our duty values are generally based on prices prevailing at the date of exportation. The Agreement provides that where the parties to the export-import transaction set their price at an earlier date when the order is placed and accepted, that earlier price (whether higher or lower than the current price) shall normally prevail for duty valuation. Another important provision is the requirement that generally accepted accounting principles be applied in customs valuation. While this is plainly a neutral provision, it has not always been followed in the past and it is important in ensuring predictability and rationality.

4. The basic standard of value in the Agreement is Transaction Value—the price the parties themselves adopt in the marketplace. Departures from this standard are held to a minimum and are permitted only for good reason. That approach to valuation may seem very obvious, and most systems have, as a matter of practical necessity, normally adopted the invoice price as the duty value in practice. But we know of no other system—including both the existing United States law and the Brussels Definition of Value—which expressly make invoice price the starting point. The benefits in terms of simplicity and predictability are obvious.

5. The principal departure from Transaction Value which the Agreement permits occurs where the exporter and importer are related and the relationship results in an artificial price. In such cases a series of alternative bases of value are invoked in sequence—the price of identical goods, then the price of similar goods, then the importer's resale price less a usual reseller's mark-up, then the manufacturer's cost plus a usual manufacturer's mark-up. The sequence of the last two standards can be reversed at the importer's option. All of these are defined in the Agreement with precision and will have to be similarly defined in our legislative implementation. Even the fall-backs permitted in the rare case where none of these methods will work are narrowly confined—to avoid leaving loopholes which would permit arbitrary increases in value and defeat the purpose of the Agreement.

6. One of the most difficult and sensitive areas dealt with in the Agreement is assists and royalties. Assists are contributions by the importer to the process of manufacture abroad—for example, furnishing tools and dyes. Royalties are payments for rights involved in the manufacture and for marketing of the products. Typically, neither assists nor royalties are included in the invoice price. Just which assists and royalties should be added to the invoice price to arrive at a fair duty value has been a vexing problem, particularly under United States law. The Agreement draws lines to indicate which are to be included and which excluded. The complexities are such, and the speed with which these subjects were dealt with in the closing days of the Geneva negotiations was such, that these areas are in need of clarification as well as implementation. We would hope that the legislation to be adopted will accomplish both ends, doing what is appropriate as well as what is necessary in this instance.

Turning finally to some of the mechanics of the implementing legislation: the Agreement itself is very close to a statute in its precision and should be closely followed in legislative drafting. Some of the interpretive notes—which are an integral and often substantive part of the Agreement—will also have to be incorporated. In broad outline, the key steps in implementation would appear to be these:

1. Section 402 (the 1956 valuation provisions) and Section 402(a) (the 1930 valuation provisions, still applicable to some merchandise) and the Final List (T.D. 54521, which lists the products still under the 1930 law), must be repealed and replaced by a new statute paralleling the Agreement's statement of the new bases of valuation, along with the definitions, evidentiary tests, options and rights of importers set forth in the Agreement.

2. Repeal is also required of the provision in Section 500 of the Tariff Act (19 U.S.C. § 1500) authorizing Customs

"To appraise the merchandise . . . by all reasonable ways and means . . ., any statement of cost or cost of production in any invoice, affidavit, declaration, or other document to the contrary notwithstanding . . ."

This approach is flatly inconsistent with the Agreement's careful insistence upon limited bases of appraisement and objective factual data from the marketplace as the only acceptable methods.

3. To eliminate American Selling Price valuation, it will be necessary to repeal the relevant portions of Section 336 of the Tariff Act, rescind the Presidential Proclamations (e.g., T.D. 46158) pursuant thereto, and repeal the relevant head notes in the Tariff Schedules. See Customs Regulations, 152.24(a).

4. Existing United States law affords importers the domestic remedies—both administrative and judicial review—called for by the Valuation Agreement. (These remedies are not now generally available abroad, but will become available as a result of this Agreement.) Appropriate provision will be required, however, regarding United States participation in the international machinery called for in the Agreement for resolving valuation disputes. Of special importance is provision for assistance to American exporters in obtaining the treatment to which they will be entitled under the Agreement. This assistance will involve the dispute resolution machinery as a last resort, but the first resort, and one we hope will also receive strong support from the Congress, will be assistance to other countries which seek help in training their customs officials to understand and apply the Code as its authors intended it to be applied.

The Agreement is much closer to current United States law and practice than it is to law and practices in other countries. As a result, our trading partners are likely to follow our lead in implementing the Agreement. Therefore, the impact on our imports from the way we implement the Agreement, is likely to have an equivalent impact on our exports when they arrive in other countries.

Senator RIBICOFF. Mr. Foy?

Senator ROTH. Mr. Chairman, I do have a statement that I want to include at the beginning of the record.

Senator RIBICOFF. Without objection, so ordered.[1]

Senator RIBICOFF. Our next witness will be Lewis W. Foy, chairman, American Iron & Steel Institute.

Mr. Foy?

STATEMENT OF LEWIS W. FOY, CHAIRMAN, AMERICAN IRON & STEEL INSTITUTE

Mr. FOY. Mr. Chairman, I am Lewis W. Foy and I am testifying as chairman of the American Iron & Steel Institute. I am also chairman of Bethlehem Steel Corp.

I have with me this morning Mr. Schubert on my left, president of Bethlehem Steel Corp., and the chairman of the AISI Committee on Internatonal Trade and Mr. Dom King, assistant general counsel of United States Steel Corp.

Mr. Chairman, I must tell you straight off that the domestic steel industry is very seriously concerned over the possible effect on our industry of the apparent results of the multilateral trade negotiations. The steel industry of the United States is, in effect, competing with foreign governments, governments which wholly or partially own or control their domestic steel industries. Those industries are nothing less than subsidized instruments of national, social, and economic policy and consequently and as a result, those foreign steel industries routinely sell in export markets at prices lower than their cost of production and their home market prices.

We believe very firmly that unless this Nation develops an effective statutory approach to unfair trade practices, subsidized and dumped foreign steel will be able to expand almost at will its already excessively high level of market penetration in this country.

---

[1] See p. 69.

Senator RIBICOFF. Do you have a list of those countries who subsidize their steel industry?

Mr. FOY Yes; we do.

Senator RIBICOFF. Would you supply that to the committee?

Mr. FOY. Yes we will, Mr. Chairman.[1]

Senator RIBICOFF. Do you have figures that you have been able to ascertain as to the percentage of the costs that are subsidized by the government?

Mr. FOY. I think we can provide that to you, Mr. Chairman.

Senator RIBICOFF. Would you please do that?

Mr. FOY. Yes; the subsidies appear in various forms, but we will try to break that down for you, sir.[1]

Senator ROTH. If the chairman would yield, I would hope that you would supply as much detail as possible of the types of subsidy. That would be helpful.

Mr. FOY. We can provide you with quite an accurate list.[1]

It is precisely because we are concerned with foreign subsidies that the steel industry supports the objectives of the multilateral trade negotiations, and I want to repeat that statement, Mr. Chairman. The steel industry supports the objectives, but we are very deeply concerned over the apparent results of those negotiations. We are troubled both by the provisions of the proposed MTN codes and the use of broad generalizations, imprecise phrases, and undefined terms. Because the proposed codes must be approved by the Congress and implemented into statutes; these problems are within the competence of the Congress to resolve.

If our serious reservations concerning these codes are not resolved satisfactorily in the implementing legislation, we submit that the result will be a giant step backward and nothing short of disaster for American workers, our business and our Nation.

Senator RIBICOFF. Do I understand that the MTN does not bother you but the interpretation of various phrases in the MTN negotiation are what bothers the steel industry?

Mr. FOY. That is precisely right, Mr. Chairman.

Senator RIBICOFF. Because of imprecision?

Mr. FOY. Because of ambiguity in the language.

The subsidy code is of particular importance to the steel industry. You will recall, in order for a countervailing duty to be applied under the code, a complainant must establish three things: A subsidy, injury, and causalty.

The remedy then becomes crucial and the procedures are critical to obtaining any relief.

The first point that we make is that there is no general definition of subsidy in the subsidy code. Implementing legislation must provide a definition that broadly includes both the export and domestic subsidies of foreign countries. The definition must be in the statute and must not be left to possible later regulations or administrative interpretations.

As you know, for dutiable items—and this includes all steel mill products—no injury test is required under our present countervailing duty statute. The subsidy code calls for a material injury test, but unless this is properly defined in implementing legislation as only

[1] At presstime July 9, 1979, the material referred to was not received by the committee.

more than de minimis injury, it would render the revised countervailing duty statute useless in all but the most extreme cases.

With respect to remedy, the draft code would permit a countervailing duty that is less than the amount of the subsidy. In fact, it would leave to the complete discretion of the executive branch the application of any remedy. This and other broadly permissive provisions must be dealt with in the implementing legislation.

The procedures specified in the code are full of provisions which are vague, murky, and indefinite. Consider, if you will, a phrase such as "when the authorities are satisfied." Consider also a concept such as our Government terminating a countervailing duty upon "arriving at a mutually agreed solution" with a foreign government.

Or consider the provision for termination of proceedings upon receipt of voluntary undertakings of various kinds.

Bearing in mind that such undertakings need be satisfactory only to the administration, irrespective of the position of the affected industry and its employee, these examples are representative of many significant details that we believe must be clarified and made explicit in the pending legislation.

Failure to remedy these defects in the implementing legislation or to incorporate our other carefully considered suggestions would, we hope, be cause for rejection of both the code and the implementing bill.

Apparently, Mr. Chairman, in an 11th hour move to accommodate the EEC, our negotiators seem to have agreed that the material injury and other key provisions of the subsidy code would be transposed into our present Antidumping Act. Given the seriousness of the problem that we see in the subsidy code, we believe that parallel changes in our Antidumping Act will weaken that statute beyond use.

Senator Russell Long was author of a Law Review article commenting on the Kennedy round and congressional rejection of efforts to change our antidumping statute. In it, he pointed out that material injury could require an industry to show that it was flat on its back before antidumping duties could be assessed.

May I proceed, Mr. Chairman?

Senator RIBICOFF. Well, we have this problem.

Mr. FOY. We are also troubled by certain provisions in the proposed Safeguard Code as well as the inequity that appears to be emerging from tariff negotiations on steel. These points are covered in detail in part 2 of my written statement. Part 3 of my statement sets forth our recommendations for improvement in the administration of U.S. trade laws.

To summarize quickly, Mr. Chairman, we support the concept of international solutions to trade problems. The steel industry is seriously concerned, however, that the proposed codes will be implemented into U.S. law in a way that renders our trade laws even less effective in dealing with unfair trade practices than they are now.

We honestly and sincerely hope that you and your committee will not allow this to happen. We urge you not to weaken but, in fact, in this legislation, to strengthen our trade laws.

Thank you, Mr. Chaiman.

Senator RIBICOFF. Mr. Foy, you raise some of the major problems that will be facing this committee and Congress. I think we do understand the imprecision and the weaknesses of many of these definitions.

It is our hope that, in negotiating with the executive branch, we can straighten out many of these problems in the legislation presented to this committee, but I am satisfied that this committee does have authority to track legislation, to be able to come up with definitions and interpretations and laws that will assure us that what we consider subsidies and countervailing duties would be in the interests of our own country.

Senator Roth?

Senator ROTH. Thank you, Mr. Chairman.

I am not certain, not having read the supplementary material, but I would hope that if you have not supplied it that you might give us the benefit of what you think would be reasonable definitions, say, in the case of material injury. I think that would be very helpful, to have your point of view in that regard.

Mr. FOY. Senator, that is in the statement.

Senator ROTH. Thank you.

Senator RIBICOFF. If the Senator would yield, I would hope that all other groups who may have a similar interest would submit to the committee their thinking and recommendations for our consideration.

Senator ROTH. One question that I would like to propound, I share your concern that it makes no difference what the codes provide if we do not actively pursue our rights and remedies under those codes. I believe that has been a problem in the past.

Do you believe that the Department of Treasury should continue, for example, to administer the countervailing duty or antidumping statutes, or would you prefer another enforcing agency such as a new Department of Trade?

Mr. FOY. I personally, Senator, do not care where the responsibility lies, providing that responsibility is accepted and acted upon and I think that we all agree that it has not been aggressively acted upon in the past.

In our meeting with the President in October 1977, he told us at that time, that it had come to his attention that the law had not been enforced. He also told us at that meeting that it was his intent to enforce the law. So the law has just not been enforced. It has been on the books.

Senator ROTH. Very frankly, I think the President is correct. I think it has been true of past administrations as well, but I think until we have an agency with primary responsibility for trade and exports that it is going to be difficult to get the aggressive attitude that I think is essential.

Mr. FOY. That could be.

Senator ROTH. Thank you, Mr. Chairman.

Senator RIBICOFF. Senator Danforth?

Senator DANFORTH. No questions.

Senator RIBICOFF. Senator Heinz?

Senator HEINZ. Mr. Foy, Mr. Carlisle submitted to the committee a few moments ago a series of amendments dealing with some of the countervailing duties. Are you familiar with the amendments?

Mr. SCHUBERT. Senator Heinz, we have kept in contact with that group as well as other groups that have expressed strong interest in this area. We are familiar, in general terms, with their amendments and in some cases the package that we have proposed is different, but in general terms we are following the same course.

Senator HEINZ. I may have missed something, but could you point out what the difference is between what the Ad Hoc Subsidies Coalition proposes and what you propose? Are there substantive differences?

Mr. SCHUBERT. There are differences. We will submit that for the record so you can have access to that.

Senator HEINZ. Is there one particular area, a critically different area?

Mr. SCHUBERT. They have focused more on the countervailing duty statute. Although we are very concerned about that area, we are equally concerned with the antidumping area and what is projected in the countervailing duties.

Senator HEINZ. My question only went to the suggestion they made on countervailing duties.

Mr. SCHUBERT. I will defer that, and we will make that submission.

Senator HEINZ. Thank you.

Senator RIBICOFF. Senator Nelson?

Senator NELSON. No questions.

Senator RIBICOFF. Senator Dole?

Senator DOLE. No questions.

Senator RIBICOFF. Senator Chafee?

Senator CHAFEE. I would just like to touch on one part of your statement, and that is on page 3 where you talk about the international codes. Most of the steel import competition in the U.S. market comes from foreign producers that I will style the new protectionists.

The markets of these producers are stringently limited or closed to imports while they simultaneously sell in the United States, and so forth.

Could you briefly describe what some of those techniques for stringently limiting or closing their markets to imports are?

Are these mainly licensing procedures or various evasionary techniques that do not conform to our trade agreements?

Mr. SHUBERT. They take many forms. It would be impossible for us to sell steel in Japan. By the time it reached the consumer, the price would be prohibitive.

Senator CHAFEE. That is really a price feature. You cannot sell cheaply enough.

Are there other techniques that you use to penetrate these markets, or are you not familiar with those because of your cost problems.

Mr. SCHUBERT. Yes; we are.

Senator CHAFEE. I would like to follow up on this if I might. I am very interested in this particular point. It seems to me that there constantly is the complaint that, through various subterfuges, American industry products cannot be sold, say in Japan, due to a variety of techniques that do not come within the purview of the trade agreements.

If you have any information with respect to that—I suppose your industry is not probably the best one to ask, because you have price problems to start with, but if you are familiar with the techniques that they use, not only in Japan, but in the European Community too, I would appreciate having this information.

Thank you.

Senator MOYNIHAN. Just one comment to you, gentlemen, and to anyone else in this room, and this committee: under the complicated, unique procedures which govern our consideration of the trade bill, we will be meeting with Mr. Strauss on March 6 for a discussion of what goes into this trade legislation.

So any of you who may have submissions for the committee's consideration really should get those proposals into the committee within the next few days.

I would like to tell you, Mr. Foy—and I notice that you are to be followed by Mr. Denison representing the AFL-CIO—that one of the great concerns to me personally, and I think to much of America, is the declining rate of productivity in the United States.

There is a lot of squawking in this country about being uncompetitive—that we don't compete favorably with the Japanese and the West Germans. The average annual rate of productivity growth of the Japanese is about 8 percent a year and the average rate of productivity growth of the West Germans is about 6 percent a year, and we have taken a nosedive in this country to about a zero rate of productivity.

Well, regardless of what laws you pass, if we have a zero rate of productivity growth and our great competitors have an 8- and 6-percent increase in productivity, they are going to beat the pants off us from one end of the world to the next.

Now, what would you like to say in response, representing as you do one of the great segments of American industry, about the decline of productivity in the United States and what your industry can do about it?

And I am going to ask the same question, Mr. Denison, of you, because I think both industry and labor bear a major responsibility in this field.

Mr. FOY. I am delighted, Senator, to respond to that question, because I have been working with it very diligently for many years.

In the steel business, our ability to improve productivity lies in our ability to generate and spend capital money.

As we modernize and enlarge and expand and get more sophisticated facilities, we do improve our productivity.

As an example, at our Sparrow's Point plant this year, we brought into being an 8,000 ton a day blast furnace which displaced four smaller furnaces—one furnace displaced four.

That one furnace cost us over $250 million, for one furnace, but our productivity increase with that one furnace is going to be very striking.

It has been or lack of capital funds to modernize and expand as rapidly as we should that has retarded our productivity.

Contrast that with Japan which, from 1965 to 1978, doubled their steel capacity with modern facilities on a basis of a better than 80 percent debt-equity. We cannot operate in this country on those kinds of debt equity, but the funds were made available to them through the Central Bank of Japan at very low interest rates to do that kind of a job.

Now, Senator, it is only Japan that produces steel at a comparable cost to the United States. No other country in this world, that we know of, does.

Europe's costs are much higher than ours and individual countries within the Common Market are striking examples.

Take Great Britain where they lost $800 million last year in the nationalized steel industry. There are no domestic—no European steel industries, we think, that can compete with ours, and the reason they cannot compete is because they have not modernized.

We have, on the other hand, in the American steel industry in the past 10 years spent $22 billion, far more than the cash flow that we generated almost twice the cash flow we generated. During the past 10 years we increased our debt limit by something over $10 billion. We just about reached the end of it.

Unless we can generate sufficient profits to continue to modernize, we will stagnate. In that 10-year period, Senator, we have not increased our capability of supplying an additional ton of steel. All we have done is just maintained our capacity in capital expenditures, a great percentage of which has gone to the environmental end of the business.

Productivity in the steel business, I repeat, can be obtained if we can continue to spend money on capital equipment and modernize our facilities. Additionally, we can conserve a tremendous amount of energy. New and modern facilities are much less energy intensive than old equipment.

Senator RIBICOFF. Thank you very much, Mr. Foy.

Senator Danforth?

Senator DANFORTH. What the the figures on how much you have invested in recent years on capital?

Mr. FOY. The industry in the past 10 years has spent $22 billion.

Senator DANFORTH. $22 billion?

Mr. FOY. $22 billion in the last 10 years.

Senator DANFORTH. $22 billion on new plant and equipment.

Mr. FOY. In modernization.

Senator DANFORTH. Modernization.

Of that $22 billion, how much of that has gone to increased productivity and how much of that has gone to meet regulatory requirements?

Mr. FOY. Of the $22 billion, some 10 to 15 percent was environmental.

Senator DANFORTH. Ten to 15 percent.

Mr. FOY. Now it is running at a rate of 20 to 25 percent, but of that $22 billion, 10 to 15 percent was environmental.

Senator DANFORTH. Is that going to be sustained at 20 to 25 percent or will that decline and will you reach a point where you have met the environmental standards and you can put that money back into plant and equipment?

Mr. FOY. As we look down the road, Senator, our environmental expenditures, at least for the next 5 to 8 years, will probably continue at that level of 20 to 25 percent because one of the major areas that we are getting into now is clean air and clean water regulations which affect some of our basic components, such as coke ovens and blast furnaces which are going to be very costly to bring into an environmentally sound installation.

Senator DANFORTH. What, in your opinion, can government do to increase your capacity to invest in productive capital goods?

Mr. FOY. One of the very simple things that we have been fighting with the Treasury about for a year and a half is to reduce our depreciation guideline. We are at 18 years. We are the second longest industry in the country. Only cement has longer depreciation guidelines than steel. They are 19 years, we are 18.

We asked the Treasury to cut our depreciation guidelines to 12. They have told us that they are going to cut it to 15, but they still have not done it.

We need faster depreciation.

Senator DANFORTH. What else?

Mr. FOY. There are many other things we need in the form of tax benefits. We think that the investment tax credit is good. We were pleased to note that you did finally confirm and make that permanent. I think in an industry as capital-intensive and labor-intensive as steel, that investment tax credit should be greater than 10 percent.

Another thing we feel very strongly about is that environmental expenditures take the same depreciation guidelines as productive equipment. We think that is a very serious mistake. Environmental expenditures should, if you desire to, be written off in the year in which they are made, at least not longer than 5 years, but they fall under the same guidelines as productive equipment.

There are many things like this, Senator Danforth, that we believe could be done to help the steel industry which is so capital intensive, probably the most capital intensive industry in the country.

Senator DANFORTH. Do you believe we could get into the position in the foreseeable future of being able to compete with the Japanese?

Mr. FOY. I have no doubt about it whatsoever. I think we are competing right now with them, right now, in our own market. I am talking about the domestic market.

When you put their freight and handling charges on the steel delivered to this country today, we are competitive.

I know, based on all the numbers we have, that we have better productivity in this country today than the Japanese do.

Senator DANFORTH. To what extent is Japanese steel being dumped on the American market?

Mr. FOY. I do not think Japanese steel is being dumped at the present time in relation to the trigger price mechanism. They are, so far as we are able to tell, abiding by it.

Imported steel, on the other hand, in relation to trigger price mechanism, is being constantly dumped by the Europeans and other foreign countries because they are selling at the trigger price, which is a price that is not consistent with what they are selling in the home market and not consistent with their cost.

Senator DANFORTH. Your position is that our antidumping laws now are essentially not enforceable?

Mr. FOY. I suppose our antidumping laws would be enforceable if a great effort was made to enforce them, but it would take a very considerable effort.

Senator DANFORTH. As a practical matter, they are not. Is that right?

Mr. FOY. As a practical matter, they are not.

Senator DANFORTH. You are familiar with the bills that I and others have introduced on procedural matters relating to the antidumping and countervailing duties?

Mr. FOY. I am, Senator.

Senator DANFORTH. Are you supportive?

Mr. FOY. Yes; we are.

Senator DANFORTH. Does your industry in general support it?

Mr. FOY. Yes; they do.

Senator DANFORTH. This is a political question, I guess, but do you think if we could build the provisions of that bill into either the enabling legislation or some companion legislation which was moving on in tandem, presenting them as a package, would that make the enabling legislation more palatable, more attractive?

Mr. FOY. May I defer to Mr. Schubert?

Mr. SCHUBERT. There is no question but that it would make it more palatable, Senator. As we have described to you and to others, there are some additional changes with regard to definitions, for example, of injury and casualty that we think are awfully essential.

We are most appreciative of the work that you have done, and Senator Heinz and others have done, to focus on the defects and we certainly support your efforts. We would like to strengthen them in some additional areas as well, in order to make this package acceptable from our standpoint.

Mr. FOY. Mr. Chairman, may I make one final statement?

Senator RIBICOFF. Certainly.

Mr. FOY. I made the statement before Senator Long's committee last fall and I feel very strongly about this position. It goes to the things we are discussing here.

The steel industry in this country has not added a ton of additional capacity in the last 10 years, in spite of the fact that the market in this country has been growing at about 1.5 to 2 percent a year. All that growth in the market has been taken up by foreign countries.

The market continues to grow at 1.5 to 2 percent a year. If this trend continues, that the domestic industry is not able to take care of this domestic market, at some point down the road here, may be in the middle 1980's, maybe a little beyond the middle 1980's, you are going to have an OPEC situation on steel.

You will have a country that will be able to supply maybe 50 or 60 percent of its steel requirements. When that happens, the balance of that steel is going to be premium-priced steel from the countries outside of the United States who will supply that market, just as they did in 1973 and 1974 when our good customers paid $100 to $200 a ton premium for every ton of steel they had to get that we could not supply.

Senator RIBICOFF. I would like to make one comment on this legislation. I do not think that any great country, be it the United States or any other great industrial nation, can allow any basic industry to be destroyed. Every basic industry in the nation, if you consider yourself a great power, must be strong.

I also believe that the key is productivity and I think that this committee, in addition to its trade responsibilities certainly and its tax responsibilities have an obligation to do everything we can to increase productivity.

I would suggest that the staff get a table for us of the comparability of the rates of depreciation of all industrial nations and also a table of comparability of investment tax credits, allocations of every industrial country that is competitive with the United States.

Are there any more questions?

Mr. HEINZ. Mr. Chairman, one suggestion. Perhaps it might be a good idea to get tables, if they are available, of productivity by sector. I am struck by the differences in our own economy between farm, manufacturing and nonfarm manufacturing. There are quite different rates of growth of productivity, and it might be good to get those for different industrial sectors if they are available, both at home and abroad.

Senator RIBICOFF. That will be done. Of course, productivity in the field of agriculture is one of the bright, shining lights of the world, but industrial—this is where the crunch comes in. But the staff will try to get that information, as suggested, Senator Heinz.

Mr. FOY. I will be delighted if you get those tables on depreciation, because you will find that, as we have, that around the world, most of the developed countries of today have depreciation guidelines running 5 years.

Senator RIBICOFF. That is why I want them. I think that is true, but I want the figures and the staff will get that for us.

Mr. FOY. That is fine.

[The following information was subsequently supplied by the staff:]

INTERNATIONAL COMPARISON OF LABOUR PRODUCTIVITY

The table below shows first the share which the value of industrial production of each of the ten countries represented of their combined total in 1970 and at the beginning of 1978. The figures for 1970 (column 1) are derived from OECD data based on national income and expenditure accounts which were converted into a common currency (U.S. dollars) at the then rates of exchange; those for 1978 (column 2) were worked out in the light of subsequent growth of industrial production, adjusted for both increases in industrial product prices and changes in parities. By this reckoning, the countries which since 1970 have gained in relative importance are (in descending order of their 1978 ranking) Japan, the Federal Republic of Germany, the Netherlands, Switzerland and Austria, while the other five—the U.S., France, the United Kingdom, Italy and Sweden—have lost. It is no coincidence, of course, that the second, unlike the first, group of countries have also suffered falls in their exchange rates to varying degrees.

For computing, the ten countries' industry workforces (in 1976) are also expressed as percentages of their combined total (column 3); thus, Germany accounts for 14.4% of their total workforce, compared with 15.9% (at the start of 1976) of their total production. Dividing the latter figure in each case by the former, one arrives at a series of quotients which show each country's productivity (output per head) in relation to the rest. Although minor differences here may be no more than statistical, major ones can nevertheless properly be regarded as significant.

WIDE VARIATIONS IN PRODUCTIVITY

If those quotients are expressed as indices (based on Germany=100) (column 4), the productivity differences they reveal are in fact considerable. The front-runner on this showing is still easily the United States, whose productivity surpasses that of Germany (in third place) by about a quarter—a relative placing which is even enforced by comparing the actual industrial sales per employee of the one ($67,000, equivalent at $1=DM 2.10 to DM 140,000, in 1977) with that of the other (DM 110,000 in 1976, DM 115,000 in 1977). In second place comes the Netherlands, while the United Kingdom and Italy—at the equivalent of little more than half the German average—bring up the rear. The rest of the field—including Japan, where the very high productivity of some large companies is offset by the comparatively poor performance of many smaller ones—trail Germany by between roughly 10 and 20%.

Source. Dresden Bank of Germany "Economic Quarterly," No. 53—August 1978.

42-978—1979——8

PRODUCTIVITY AND LABOR COSTS OF 10 LEADING INDUSTRIAL COUNTRIES

Country	Percent share of combined industrial production [1] 1970	Percent share of combined industrial production [1] Start of 1978	Percent share of combined workforce [2]	Indexes (Germany=100) Productivity [3]	Indexes (Germany=100) Total labor costs [4]	Indexes (Germany=100) Unit labor costs
Germany	13.9	15.9	14.4	100	100	100
United States	48.0	42.7	31.4	124	89	72
Japan	12.9	16.3	19.4	76	69	91
France	7.9	7.6	8.8	78	65	83
United Kingdom	7.0	6.4	11.3	52	43	83
Italy	5.0	4.9	8.8	51	59	114
Netherlands	1.7	2.1	1.7	116	101	87
Switzerland	1.3	1.6	1.5	93	99	106
Sweden	1.4	1.3	1.5	79	100	127
Austria	.9	1.1	1.3	82	68	83
Total	100.0	100.0	100.0			

[1] At current prices, converted at current dollar exchange ratios.
[2] Industry. 1975.
[3] Output per head.
[4] Allowing for differences in annual working hours.

U.S. PRODUCTIVITY GROWTH BY INDUSTRY, 1950-77

[Percent change per year]

Industry	1977 output share (percent) [1]	1950-65	1965-73	1973-77
Agriculture	2.9	4.9	3.6	3.0
Mining	1.5	4.3	1.9	-6.1
Construction	4.3	3.4	-2.1	.3
Manufacturing:				
Nodurable	9.9	3.2	3.3	2.2
Durable	14.4	2.5	2.2	1.2
Transportation	3.9	3.0	2.9	1.0
Communication	3.2	5.3	4.6	6.7
Utilities	2.3	6.1	3.5	.2
Trade:				
Wholesale	7.3	2.6	3.4	-.8
Retail	10.0	2.3	2.1	.8
Finance, insurance, and real estate	15.4	1.6	.2	2.3
Services	12.0	1.2	1.7	-.3
Government	12.5	.4	.5	.1
All industries:				
Current weights	100.0	2.7	2.0	.11
Fixed weights (1977 output weights)		2.6	1.9	1.1

[1] Detail may not add to 100 percent because of rounding.

Note: Growth data relate to output per hour worked for all persons.
Sources: Department of Commerce (Bureau of Economic Analysis) and Council of Economic Advisers.

SPECIAL ALLOWANCES FOR BUILDINGS, BY COUNTRY

Country	Accelerated depreciation [1]					Additional deduction [2]			Tax credit		Cash grant		Tax-free reserve activity [1]
	All buildings	Type of building	Region of use	Activity	Other	Type of building	Region of use	Activity	Activity	Other	Region of use	Activity	
Australia			X	X									
Austria				X				X					X
Belgium			X										
Canada		X						X					
Denmark		X	X		X						(3)		X
Finland			X	X			X						X
France		X		X								(4)	
Germany		X		X	X		X				(4)	(5)	
Greece		X	X	X									
Ireland		X		X		X		X			(3)		
Italy	X										(3)		
Japan			X	X	X								
Luxembourg		X							(5)				
Netherlands			X								(4)		
Norway		X					X						X
Portugal				X	X								(4)
Spain			X		X				(4)	(4)			(4)
Sweden	X				X								X
Switzerland					(4)								(4)
Turkey							X	X					
United Kingdom		X	X								(3)		
United States													

[1] Reduces depreciation base unless otherwise specified.
[2] Does not reduce depreciation base unless otherwise specified.
[3] Reduces depreciation base.
[4] Effect on depreciation base not reported.
[5] Does not reduce depreciation base.
X = Applicable.

Source: George Kopits, "International Comparison of Tax Depreciation Practices," (OECD, Paris) 1975, p. 23.

SPECIAL ALLOWANCES FOR EQUIPMENT, BY COUNTRY

Country	Accelerated depreciation[1]					Additional deduction[2]				Tax credit					Cash grant		Tax-free reserve[1]	
	All equipment	Type of equipment	Region of use	Activity	Other	Type of equipment	Region of use	Activity	Other	All equipment	Type of equipment	Region of use	Activity	Other	Region of use	Activity	Type of equipment	Activity
Australia			X	X		X		X										
Austria	X		X					X										
Belgium		X	X	X														X
Canada		X	(3)	(3)				X										
Denmark		X			X													
Finland		X	X												(4)			X
France							X											X
Germany			X	X	X	X					(4)		(4)					
Greece		X	X	X											(3)			
Ireland	X	X				X	X											
Italy	X														(4)			
Japan			X	X	X										(4)			
Luxembourg				X				X			(3)		(3)					
Netherlands						X			X									
Norway		X					X								(4)			
Portugal				X	X													X
Spain			X		X								(4)					(3)
Sweden					X						(4)		(4)		(4)	(4)		(4)
Switzerland					(5)				X									X
Turkey							X	X										(5)
United Kingdom	X														(3)	(3)		
United States	X			X						(3)							(3)	

[1] Reduces depreciation base unless otherwise specified.
[2] Does not reduce depreciation base unless otherwise specified.
[3] Does not reduce depreciation base.
[4] Reduces depreciation base.
[5] Effect on depreciation base not reported.
X=Applicable.

Source: George Kopits, "International Comparison of Tax Depreciation Practices" (OECD, Paris,) 1975, p. 24.

Senator RIBICOFF. Senator Dole?

Senator DOLE. I just want to say before the witness has left—I do not have a question, but I would like to distribute to the witnesses and members of this committee some legislation that I have been considering to amend sections 301 and 302 of the Trade Act of 1974, in an attempt to energize the vestigial parts of the law that we passed to help regulate foreign commerce. I believe it is relevant to bring the matter up now and maybe get some discussion on it because it addresses issues which I think lay at the heart of implementing the MTN agreements: first, how do we make the executive branch more responsive to private sector problems involving trade practices of other countries; second, how can we provide greater certainty that the executive branch will assert private sector claims in the new international fora that the trade agreements will establish; and third, how do we guarantee that the implementation of trade agreements will take place on a reciprocal basis.

The legislation that I am proposing would provide a procedure by which the International Trade Commission would make determinations and recommendations filed under section 301. Included in the determination would be whether trade agreements are being violated by a cosignatory or whether an agreement is being implemented on a reciprocal basis and then, based on the ITC's findings and recommendations, the President could take whatever action that is within his authority, although it would be subject to congressional disapproval. If disapproved, the ITC's recommendations would take effect.

It would seem to me to be an appropriate time, as we are listening to a number of expert witnesses here, to at least take a look at this proposal. It would give the ITC the authority to make a determination as to whether a country, first of all, maintains an unjustifiable and unreasonable tariff or other import restrictions in paring the value of trade commitments made to the United States that discriminate against U.S. commerce. Second, whether they imposed unjustifiable and unreasonable restrictions on access to supplies of food, raw materials, and other products which restrict U.S. commerce. Third, whether they failed to implement on a reciprocal basis or complied with the terms and intent of the trade agreements entered into under authority of the Trade Acts of 1972 and 1974.

It also gives the ITC the authority to recommend actions to resolve the problems noted above and it would require the President, any President, to take remedial action or file a claim in an appropriate international forum to resolve the problem.

Just one example. We have not focused on agriculture, but let us focus on agriculture, for example. If the EC is using a subsidy to promote export sales of a given agricultural product, the effect of which is to restrict the sale of a U.S. product in a given market, a U.S. company producing that product would not be able to complain to the Committee of Signatories of the subsidies agreement.

First, the company has to persuade the U.S. Government as a signatory of the agreement to file a complaint. The current practice indicates that moving the Government in such a direction is very difficult and it is often a question of politics.

Under the legislation I am suggesting a predictable, nonpolitical procedure would be established in which the President would be required to assert a claim if the ITC found the claim to be valid and it seems to me that the success or failure of what we are going to do, as far as the MTN is concerned, is how we implement it and how we protect the private sector and other sectors that we deal with directly.

So I would hope that the introduction of such legislation during the so-called consultation period, would place the administration on notice that there may be some problems, and that we must address those problems. I would appreciate any comments from any of my colleagues or the witnesses in the next couple of weeks.

[The following material was submitted by Senator Dole:]

PROPOSAL BY SENATOR DOLE FOR THE AMENDMENT OF SECTIONS 301 AND 302 OF THE TRADE ACT OF 1974

Section 301. Responses to certain trade practices of foreign governments.

(a) Whenever the International Trade Commission determines that a foreign country or instrumentality—

(1) maintains unjustifiable or unreasonable tariff or other import restrictions which impair the value of trade commitments made to the United States or which burden, restrict, or discriminate against United States commerce,

(2) engages in discriminatory or other acts or policies which are unjustifiable or unreasonable and which burden or restrict United States commerce,

(3) imposes unjustifiable or unreasonable restrictions on access to supplies of food, raw materials, or manufactured or semimanufactured products which burden or restrict United States commerce, or

(4) is failing to implement on a reciprocal basis or comply with the terms or intent of trade agreements entered into under the authority of the Trade Act of 1974,

the Commission shall inform the President and Congress of its determination and recommend to the President by a majority vote of the Commissioners voting, action specified in paragraphs (A) and (B) of subsection (b) that could be taken to eliminate the conditions determined to exist.

For purposes of this subsection, the term "commerce" includes services associated with the international trade.

(b) The President shall by proclamation and within 90 days of receipt of the Commission's determination and recommendation, take all appropriate and feasible steps within his power to obtain the elimination of the conditions found by the Commission to exist, including—

(A) suspending, withdrawing or preventing the application of, or refraining from proclaiming, benefits of trade agreement concessions to carry out a trade agreement with such country or instrumentality; and

(B) imposing duties or other import restrictions on the products of such foreign country or instrumentality, and imposing fees or restrictions on the services of such foreign country or instrumentality, for such time as he deems appropriate; or

(C) when appropriate, may attempt to resolve the issue within an appropriate international forum in keeping with his authority specified in this section or other provisions of law.

(c) In determining what action to recommend under subsection (a) the Commission shall consider the President's authority as specified in this section and shall consider the factors listed in section 203(c) of the Trade Act of 1974.

(d) In determining what action to take under subsection (b) the President shall consider the relationship of such action to the purposes of the Trade Act of 1974, specified in section 2 of that Act. Action shall be taken under subsection (b) against the foreign country or instrumentality involved, except that, subject to the provisions of section 302, any such action may be taken on a nondiscriminatory basis.

(e)(1) The Commission shall provide an opportunity for the presentation of views concerning the restrictions, acts, policies, or practices referred to in paragraphs (1), (2), (3), and (4) of subsection (a).

(2) upon complaint filed by any interested party with the Commission alleging any such restriction, act, policy, or practice, the Commission shall conduct a review of the alleged restriction, act, policy, or practice, and, at the request of

the complainant, shall hold public hearings thereon. The Commission shall have a copy of each complaint filed under this paragraph published in the *Federal Register.* The Commission shall issue regulations concerning the filing of complaints and the conduct of reviews and hearings under this paragraph and shall submit a report to the House of Representatives and the Senate semi-annually summarizing the reviews and hearings conducted by it under this paragraph during the preceding 6-month period.

(f) Before the President takes any action under subsection (b) with respect to the import treatment of any product or the treatment of any service—

(1) he shall provide an opportunity for the presentation of views concerning the taking of action with respect to such product or service,

(2) upon request by any interested person, he shall provide for appropriate public hearings with respect to the taking of action regarding such product or service.

If the President determines that, because of the need for expeditious action under subsection (b), compliance with paragraphs (1) and (2) would be contrary to the national interest, then such paragraphs shall not apply with respect to such action, but he shall thereafter promptly provide an opportunity for the presentation of views concerning the action taken and, upon request by any interested person, shall provide for appropriate public hearings with respect to the action taken. The President shall provide for the issuance of regulations concerning the filing of requests for, and the conduct of, hearings under this subsection.

Section 302. Procedure for Congressional disapproval of certain actions under section 301.

(a) When the President takes action under section 301 (b), he shall transmit to the House of Representatives and to the Senate a document setting forth the action he has taken together with his reasons therefor.

(b) (1) If, before the close of the 90-day period beginning on the day on which the document referred to in subsection (a) is delivered to the House of Representatives and to the Senate, the two Houses adopt, by an affirmative vote of a majority of those present and voting in each House, a concurrent resolution of disapproval under the procedures set forth in section 152 of the Trade Act of 1974, then the action recommended by the Commission pursuant to section 301 (a) shall take effect as provided in paragraph (2) of this subsection.

(2) If the contingency set forth in paragraph (1) occurs, the President shall (within 30 days after the adoption of such resolution) proclaim the action to be taken as recommended by the Commission pursuant to section 301 (a).

Mr. Foy. All I can say, Senator, is amen.

Senator Ribicoff. Thank you very much.

Mr. Denison please?

Senator Chafee. May I ask one final quick question?

Senator Ribicoff. Certainly.

Senator Chafee. This comes back to the chairman's question earlier. It seems to me from your testimony here, if you had your druthers, instead of seeking more protection or assistance to your industry and others, you would prefer fast depreciation and investment tax credits so you could get the industry more competitive with the rest of Europe, and the Japanese.

Is that true? I know you feel competitive with the Western Europeans but it seems to me that if you could have the more rapid writeoff of environmental protection equipment, and so forth, you would be better off.

Mr. Foy. Senator, what you are saying is certainly true, but you have to reserve this judgment.

As I said, many of our foreign competitors are nationalized industries who are in business for one thing—to create employment—and unless we have the protection of antidumping laws, they will continue operating and sell their product at whatever they have to sell it to continue to operate and to provide employment, which is what they were doing in 1975, 1976, and 1977 and continuing to do under the trigger price.

Senator CHAFEE. Thank you.

[The prepared statement of Mr. Foy follows:]

STATEMENT OF LEWIS W. FOY, CHAIRMAN, AMERICAN IRON & STEEL INSTITUTE

Part I.—Summary of AISI position on MTN Results and Trade Reform

Mr. Chairman, my name is Lewis W. Foy, and I am appearing today in my capacity as Chairman of the American Iron and Steel Institute. I am also Chairman of Bethlehem Steel Corporation. My colleagues and I are grateful for this opportunity to present the views of the American steel industry on the results of the multilateral trade negotiations. The subject matter of this hearing is of singular importance to our industry.

The U.S. steel industry in effect is competing with foreign governments—governments which wholly or partially own or control their domestic steel industries, making them subsidized instruments of national, social and economic policy. As a result, those industries routinely sell in export markets at prices significantly below both cost of production and home market prices.

The results have been devastating for the American steel industry. Imports have averaged about 20 million tons a year over the past two years, taking 18% of the U.S. market. The steel trade deficit alone last year was about $5.6 billion, and it has become the second largest contributor to the U.S. trade deficit.

Unless this nation develops an effective statutory approach to the kind of unfair trade practices which are so clearly prevalent in international steel trade, subsidized foreign steel will not only maintain its present high level of market penetration in this country but will be able to expand at will.

Any independent expert analysis of comparative costs of production and other entry costs will clearly show that the American industry is the efficient producer for the American market. Accordingly, we find it unacceptable to be unable to expand our caacity to supply a growing American steel market due to unfairly priced imports. This should also be unacceptable to our Government. The United States needs a strong steel industry and a secure steel supply.

The steel industry supports the objectives underlying the U.S. Government's approach to the multilateral trade negotiations. We concur in the need for expansion of world trade, and we concur in its benefits to the world economy.

This view has led to strong reservations on our part concerning the distortion of the concept of comparative advantage inherent in foreign government subsidization of their steel industries, dumping by those industries, and in the manner in which the U.S. Government enforces our countervailing duty and antidumping laws. The distortion of comparative advantage is particularly severe under the present U.S. steel trigger price system, which is based upon Japanese costs and thus permits continued dumping by European and other higher cost foreign steel producers who are entering the U.S. market at prices based upon Japanese production costs and comparative advantage.

These conceptual issues relate directly to the matters under consideration at this hearing, the international codes designed to cope with unfair trade practices, and changes in U.S. laws necessary to prevent these practices.

THE INTERNATIONAL CODES

Most of the steel import competition in the U.S. market comes from foreign producers which I would style the new protectionists. The markets of these producers are stringently limited or closed to imports, while they simultaneously sell in the U.S. market at prices lower than their costs of production or their home market prices. When we decry such practices and urge our Government to act against dumped and subsidized imports, the foreign produers or their governments all us protectionists while they at the same time practice an outrageous distortion of the concept of comparative advantage in our market.

The codes negotiated in the MTN are an attempt to improve the international rules governing trade practices. They are a step in the right direction, conceptually, but it would be less than realistic for us to assume that either through their formulation or administration the MTN Codes can change the structure of steel industries in other countries. Government subsidies and ownership are the root cause of these unfair commercial practices in the U.S. market.

Notwithstanding this, we are most interested in the substance and procedural aspects of the codes. We have a crucial concern about the changes in existing law necessary to implement the codes and about the changes in existing law which are necessary to make our trade laws function adequately.

Our views on the more important codes under review at this hearing are as follows:

SUBSIDY/COUNTERVAILING DUTY CODE

The Subsidy Code is of particular importance to the steel industry. You will recall that in order for a countervailing duty to be applied under the Code, a complainant must establish a subsidy, injury, and casualty. The remedy then becomes crucial, and the procedures are critical to obtaining any relief.

The first point we make is that there is no general definition of "subsidy" in the Subsidy Code Implementing legislation must provide a definition which broadly includes both the export and domestic subsidies of foreign countries. The definition must be in the statute and not left to possible later regulations or administrative interpretations.

As you know, for dutiable items (which include all steel mill products), no injury test is required under our present countervailing duty statute. The Subsidy Code calls for a material injury test, which if not properly defined in implementing legislation as meaning only more than de minimis injury, would render the revised countervailing duty statute useless except in the most extreme cases.

Concerning the remedy: The draft code would permit a countervailing duty less than the amount of the subsidy and, in fact, would leave to the complete discretion of the Executive Branch the application of *any* remedy. This, like other broadly permissive provisions, must be dealt with in the implementing legislation.

The procedures specified in the Code are replete with generalizations. There are many phrases such as "when the authorities are satisfied," or concepts such as our government terminating a proceeding upon "arriving at a mutually agreed solution" with a foreign government. Other similar concepts exist such as termination of a proceeding upon receipt of voluntary undertakings of various kinds—undertakings which need only be satisfactory to the government, irrespective of the position of the affected industry and its employees. All these broad phrases and concepts need to be made definite in the implementing legislation.

Failure to make these changes, as well as the other essential changes we are proposing, by incorporating them into the implementing bill, would be cause for rejection of both the Code and the implementing bill.

U.S. ANTIDUMPING ACT

Apparently as an 11th hour move to accommodate the EEC, our negotiators seem to have agreed that the material injury and other key provisions of the Subsidy Code would be transposed into our Antidumping Act. Given the seriousness of the problems we see in the Subsidy Code, we believe that parallel changes in our Antidumping Act will weaken that statute beyond use.

As Senator Russell Long said in a Law Review article commenting on Congressional rejection of efforts in the Kennedy Round to modify our antidumping statute, "material injury" could require an industry to show that it was "flat on its back" before antidumping duties could be assessed. We agree. This should not be tolerated in either the Dumping Act or the Countervailing Duty Act.

SAFEGUARDS CODE

Important provisions of Safeguards Codes are still lacking and negotiations are continuing. Along with the problems of definition and criteria that beset other codes, we have a specific concern with respect to this Code. It is our understanding that the pervasive quantitative import restrictions on steel that are imposed by the EEC would not be subject to the Code. In contrast, we understand that the American quotas on specialty steels—a much more limited action than the EEC quotas—would fall under the Code. To us, this would constitute a blatant and unjustifiable dual standard. With respect to the proposed tariff cuts, we are seriously concerned with the inequity which appears to be emerging from the negotiations.

SUMMARY

The concept of international solutions to trade problems is one we support. However, the steel industry is concerned that the proposed Codes will be implemented into U.S. law in a way that renders our trade laws even more ineffective in dealing with unfair trade practices than they are now. We earnestly hope that you will not permit this—and that you will in fact strengthen our trade laws.

Twelve years ago a report on steel imports published by the Senate Finance Committee concluded that there was an "urgent need for fairer rules in international steel trade." That need is even more urgent today. Effective domestic legislation will help meet that need.

Part II of our statement contains our detailed comments on the Codes and on the Tariff cuts.

Part III sets forth our recommendations for improvements in both the substance and administration of our trade laws.

Part II.—AISI Recommendations on MTN Codes and Tariff Results

During the course of the multilateral trade negotiations (MTN), our industry has stated its position consistently and clearly on what we hoped to obtain from these negotiations. Clearly, much of what the industry sought has not been attempted or obtained.

What is emerging as the MTN result is not yet susceptible to definitive response for several reasons: (a) the draft texts of the non-tariff codes are still in varying degrees of completion; (b) the details of the tariff negotiation results are unknown to us; (c) the text of the implementing legislation has not yet been drafted; (d) the administrative organization and procedures required to carry out domestic laws and fulfill responsibilities under the international codes are as yet unspecified; and (e) in the case of steel, the OECD Steel Committee created in late 1978 has not yet become fully operational.

Despite these deficiencies, the industry wishes to present its views on tariffs and on the codes which most directly concern our industry. Given the complex nature of each of the issues, our comments are presented in summary form; we have more extensive analysis and materials to support our summary statements.

TARIFF CUTS

Our current information is that the United States would end up with lower tariffs on steel products than any of its major steel trading partners.

Ironically, the same countries that have engaged in bilateral quota and price agreements protecting their home market, while flooding the U.S. market with imported steel, are not willing to reduce their steel tariffs to the same level that the U.S. has offered. This situation is incomprehensible to us. We do not understand why the United States has offered to reduce steel tariffs to a level lower than that of our trading partners.

Accordingly, in concluding the U.S. negotiation on tariff cuts, we are urging the Administration to take the following positions:

Proposed U.S. reductions in steel tariffs should not be greater than the reductions being offered by our major trading partners; and

At the conclusion of negotiations, average steel tariffs of the U.S. should not be lower than those of the EEC, Japan and Canada.

SUBSIDY/COUNTERVAILING DUTY CODE

The Subsidy Code has conceded too much and obtained too little to be acceptable as it is presently written. The only "hard" obligation in this code is a prohibition against the use of export subsidies; these, however, are not the steel industry's main problem. Our much greater concern is with domestic, or so-called internal, subsidies which have a trade distorting effect.

In our view, the code obligation against internal subsidies is weak (signatories shall "seek to avoid" causing serious prejudice through their use and should take their "possible adverse effect" into account in formulating policies and practices). It remains to be seen how the domestic procedures for relief against foreign internal subsidies will be formulated.

INJURY—NOW AND UNDER THE CODE

Under existing countervailing duty law, there is no injury requirement for dutiable goods and a simple showing that an industry is being or likely to be "injured" for nondutiable items. The Subsidy Code would change this to require a showing of "material injury" to a domestic industry before relief could be obtained from subsidized products. And there must be proof of a "causal link" between the subsidized imports and the material injury. The modifying term "material" may be defined to mean that the injury to an industry must be of great consequence or real importance.

Under existing antidumping law, it need only be shown that an industry is being or likely to be "injured" by reason of dumped goods. The Subsidy Code mandates that the antidumping law will be amended to provide the same "material injury" and "causal link" standards.

The method of injury determination is further elaborated in the code, which requires an examination of the volume of subsidized imports and their effect on prices in this market; the implementing legislation may require that only if the volume and price tests can be met is inquiry to be made as to the consequent impact on domestic producers. The test for volume of subsidized imports is a determination of whether there has been a "significant increase in subsidized imports". And the test for the effect on prices is a determination of whether there has been a "significant price undercutting" by the imports compared with domestic prices or whether the imports have depressed "prices to a significant degree" or prevented significant price increases which would otherwise have occurred.

Thus, before getting to an examination of the impact on the industry caused by subsidized imports, it may be necessary to satisfy proof of a significant increase in subsidized imports and significant price undercutting, significant price erosion of domestic prices, or significant suppression of domestic price increases that would otherwise have occurred. Is this to mean that if subsidized imports are presently coming into this country at a high volume it will be impossible to meet the burden of proving "material injury" after adoption of the code so long as the already large volume of subsidized imports does not "significantly" increase? Or take this example: A domestic industry where domestic supply far exceeds demand so that prices are at quite a low level. Subsidized imports of those products enter this country and sell at domestic prices so that they do not "significantly undercut prices" nor do they "significantly depress prices". The supply-demand situation is such that the subsidized imports do not repress price increases either. Nonetheless, subsidized imports are taking a healthy share of an already depressed market, which forces domestic producers to operate at even lower operating rates which adversely affects the industry's employment, costs, and profits. But, under the criteria enunciated in the code, as they may be elaborated in implementing legislation, you may never reach inquiry as to the impact the subsidized imports are having on the domestic industry by virtue of not being able to overcome the threshold standard of showing price undercutting or price suppression by the imports. The antidumping statute is likewise proposed to be amended to impose the same severe burden of proving injury.

The code provisions on the economic criteria to be evaluated in determining whether or not the subsidized imports have had an adverse impact on an industry are appropriate factors. However, other provisions of the code require proof of a causal connection between the subsidized imports and material injury to the domestic industry. The code notes that other factors at the same time may be injuring the industry, and the injuries caused by such "other factors" must not be attributed to the subsidized imports. If this proviso means anything, it will require that the injury determination sort out all of the economic factors which may be adversely affecting an industry and somehow find a means of isolating that injury attributable to subsidized imports from that injury caused by "other factors". This is no easy economic feat. At any given time, any industry anywhere in the world is being affected in one way or another by any number of economic factors. To segregate the impact of subsidized imports from all other economic factors requires a qualitative measurement extraordinarily difficult of accomplishment at best and impossible of attainment at worst. But the code requires that the test of "material injury" to an industry must be shown to have been caused only by the subsidized imports.

We submit that there may, in implementing legislation, to be threefold process of establishing "material injury"—

First, a showing of significant increase in volume of imports;

Second, a showing of significant price undercutting or significant price depression or repression; and

Third, a showing of the adverse impact on the industry attributable to subsidized imports as distinct from all other adverse factors.

that imposes a near impossible burden of proof, in both the countervailing duty and the antidumping statutes. Although this may not have been the intent of our negotiators, we believe this may be the unhappy consequence of the code.

REMEDIES—NOW AND UNDER THE CODE

If an industry is so lucky as to overcome this formidable hurdle of proving material injury, it then looks to the remedies afforded under the Subsidy Code. Present law requires that upon a finding of subsidies that countervailing duties must be imposed in the amount of the subsidies. However, the code permits the imposition of countervailing duties that are less than the amount of the subsidy "if such lesser duty would be adequate to remove the injury to the domestic industry". Furthermore, the countervailing duties imposed under the code "shall remain in force only as long as, and to the extent, necessary to counteract the subsidization which is causing injury". Our government would be obliged to review the need for continued imposition of such countervailing duties.

The route required to prove subsidies and material injury in order to arrive at limited and discretionary remedies can only leave domestic producers with the conviction that the relief potential doesn't warrant the hazards and hardships of the journey. The code provides that any investigation or any action may be terminated without imposition of any countervailing duties if the offending signatory agreed to eliminate or limit the subsidy so that it no longer causes injury or upon an undertaking by the exporter to revise its prices to eliminate injury or to cease or limit its exports of the subsidized product to the affected area. These termination provisions in the code leave nearly unchallengeable discretion in our enforcement officials to abandon any countervailing duty investigation or proceeding, even though subsidies and injury have been shown to exist.

CONSULTATION PROCEEDINGS

Under any countervailing duty proceeding, the code requires that international consultations take place as soon as possible after any countervailing duty complaint is accepted and "before the initiation of any investigation". The aim of these consultations is to arrive at mutually agreed solutions. In addition, the code requires that during the period of a countervailing duty investigation international consultations must take place with the view to arriving at a mutually agreed solution. The code is quite explicit on this point when it states: "It is particularly important . . . that no affirmative finding whether preliminary or final be made without reasonable opportunity for consultations having been given". This must surely mean that before domestic authorities may investigate, adjudicate and impose a countervailing duty our government must consult with the signatory parties in a good faith effort to arrive at a mutually agreed solution. If our international representatives arrive at a solution satisfactory to them (which may be totally unacceptable to the affected domestic industry), it follows that the code contemplates that an agreed upon international solution will make it unnecessary for domestic adjudication and imposition of countervailing duties. This necessarily leaves the enforcement of the countervailing duty code to the uncertain outcome of our government officials in international consultations arriving at a "mutually agreed solution", which would moot the domestic proceedings. Countervailing duties would be imposed only if our international representatives could not arrive at what they felt was a mutually agreed solution.

The code nowhere spells out what minimum standards must be met in order to satisfy the criteria of a "mutually agreed solution". Once again, this leaves the remedy for subsidized imports to the unfettered discretion of government officials to work out such a solution or remedy as they see fit. This contrasts sharply with the existing countervailing duty law, which absolutely mandates the imposition of countervailing duties in the amount of the subsidy once the Secretary of the Treasury has determined that a bounty or grant has been provided on imported goods.

In response to the Subcommittee request for views, following are our views on the specific issues cited in the Subcommittee announcement.

1. *Administering agency.*—In our view, the conduct of antidumping and countervailing duty investigations has too often become subject to political influence.

Reorganization of international trade functions is long overdue. We recommend that countervailing and antidumping responsibilities be vested in an independent agency to insure that cases can be processed on their economic merits.

2. *Definition of "injury"*.—"Injury" is not defined in the code. In the implementing legislation it can and should be. The best way to define "injury" is to follow the definition which this Committee described in the Senate Finance Committee Report on the Trade Act of 1974 concerning dumping. Specifically, we suggest that in the portion of the implementing legislation corresponding to paragraph 5 of code Section 1–F, after the words "causing injury" a phrase be inserted that says "(which need only be more than de minimis)". Failure to do this will result, we submit, in interminable litigation and, we fear, the denial of relief from foreign subsidized products. We urge the inclusion of economic factors such as "actual and potential negative effects on cash flow" and "ability to raise capital or investment" in the examination of impact on an industry.

As far as non-signatories are concerned, the injury test and other code benefits should not apply; there should be strong incentive to join the code. However, internal subsidies should be actionable under the existing statute with respect to non-signatories.

3. *Definition of "Industry"*.—No statutory guidelines are presently available to assist on the pivotal definition of "industry". It is therefore recommended that Congress add to the countervailing duty statute and the Antidumping Act a definition of industry encompassing two key features:

First, "industry" should be defined in terms of the facilities actually producing merchandise like or comparable to that being subsidized or dumped. Such a provision would resolve an issue that has caused confusion for almost two decades. It would reject, once and for all, the notion that a manufacturer who lost considerable sales and profits in a given product line due to importation of dumped merchandise was not actually injured because his sales and profits in other lines were unimpaired.

Second, the definition of "industry" must recognize that injury can occur in a particular region. The International Trade Commission has gone "full circle" in its approach to regional markets over the years. Absent statutory direction from Congress, there is no assurance the Commission's present position will remain in effect. Indeed, as the composition of membership changes in the future, changes in the Commission's method of treating regional markets are almost inevitable. The proposed amendment would codify the current interpretation and add stability to the administration of this country's trade laws.

4. *Duties smaller than the amount of subsidy*.—Section 1–C of the code makes permissive a countervailing duty lesser in amount than that actually found to be the subsidy. Since by definition the subsidy is unfair competition, we submit that the full measure of the subsidy must be subject to countervailing action.

5. *Termination of investigation*.—Realistically, administrators of the countervailing duty law should be permitted to terminate investigations provided there are clear guidelines in domestic legislation for doing so. A "mutually agreed solution" between our government and the subsidizing government, that did not ensure termination of the subsidization or a price adjustment to fully compensate for it, could do violence to the domestic industry and its employees. At a minimum, we recommend that any agreement or undertaking with respect to prices, quantities or subsidy amounts be fully transparent, be notified in advance to the domestic complainant, provide for monitoring and provide for specific sanctions in the event the agreement or undertaking is breached.

6. *Judicial review*.—There should be a strengthening of the right judicial review of decisions made at the administrative level under the countervailing duty statute. Judicial review should be subject to time limits and cover a decision not to begin an investigation, a finding of whether there were subsidies, and the finding of the amount of countervailing duty to be imposed.

7. *Dispute settlement apparatus*.—The question of representation in the dispute settlement process is tied into the broader issue of reorganization of the international trade functions within the U. S. government. The existing assignment of agency responsibilities is clearly deficient. Whatever organizational changes do result, the responsibility for representation in dispute settlement should be lodged with experts charged with the day-to-day execution of subsidy responsibilities.

Also, the U. S. Government should determine as a matter of policy to submit names of qualified non-governmental persons to serve on international panels. The code provides for such persons; this would insure more impartiality in dispute settlement than might otherwise be the case.

Implementing legislation should provide that any affected domestic company, union or trade association has the right to request commencement of the dispute settlement process. There should be required response times and appeal procedures. Private complainants should have the right to advise and observe during the domestic and international procedures.

INTERNATIONAL ANTIDUMPING CODE

The prefatory explanation to the Subsidy/Countervailing Duty Code states:

"The EC, and others, have argued that it would be illogical, and potentially troublesome, to interpret GATT Article VI one way for countervailing and another for antidumping. We believe that in each case the adoption of the countervailing provisions in the dumping context would, in fact, result in closer conformity between actual U.S. practice in dumping and the provisions of the Antidumping Code, and *could well be desirable from a U.S. point of view.* (Emphasis added)

At present, we do not concur with this conclusion. In our view, the parallel changes being sought in the International Antidumping Code, and presumably in the U. S. Antidumping Act, would significantly erode already inadequate levels of protection against dumping. Our reasons are as follows:

We have not yet seen specific language describing the changes in definition of material injury, casuality and regional industry that are being proposed.

It appears that the terms proposed to be used in the Subsidy/Countervailing Duty Code and the International Antidumping Code could result in far more stringent criteria of injury and casuality than is currently the case under the U.S. Antidumping Act.

Senator Long, in a law review article commenting on the Congressional rejection of efforts in the Kennedy Round to modify our antidumping statute by adoption of the International Antidumping Code with its "material injury" requirement, correctly observed that the "material injury" standard would require an industry to show that it was "flat on its back" before dumping duties could be assessed.

With respect to the specific issue raised by the Subcommittee:

1. *Administering agency.*—Our views on the need for reorganizing the handling of international economic functions within the U.S. Government have already been stated above in the section dealing with the countervailing duty statute. Administration of the antidumping statute should fall wtihin the same administering authority as the countervailing duty act, both being as free as possible from political influence.

2. *Relation to countervailing duty concepts.*—Despite the tendency to join the two, the countervailing duty and antidumping laws have been conceptually separate. The countervailing duty law is, in practice, a remedy against governmental subsidization, whereas the Antidumping Act deals with injurious sales at less than fair value by private parties.

The distinction is becoming blurred, however. In the case of British Steel Corporation (a government-owned entity), there is massive subsidization by the British government, and the BSC can itself engage in dumping. The point is that there can be official subsidization and official dumping.

In view of the increased governmental activity in both subsidization and dumping and the increasing difficulty for private sector complainants to quantify the margins attendant thereto, we submit that the threshold of casuality and injury under both statutes must be no greater than that existing under the present U.S. Antidumping Act.

For this reason, we are opposed to any changes in the U. S. antidumping statute which would require a showing that dumped merchandise is a "principal" cause of "material" injury, as is required under the present International Antidumping Code. Nor do we wish to see the international code amended to drop the qualifiers "principal" and "material" only to be replaced with language which accomplishes the same result.

SAFEGUARDS CODE

Important provisions of this code are still under negotiation. At present, several major points are of concern to us:

"Principal cause" still remains in the draft code; this concept would increase the risk that proof of causality will be more difficult than currently exists under the U.S. escape clause;

There is no provision for regional injury;

The decision on selective application for safeguard measures appears not to have been finally made;

Contrary to our original impression, it now appears that not all quantitative import restrictions undertaken by signatories have to be notified under Chapter 9 of the code;

The code does not include assessment of "actual and potential negative effects on cash flow" and "ability to raise capital or investment" among the factors to be included in examining injury, as is the case in the subsidy/countervailing duty code.

The domestic steel industry has reason to be concerned with the degree to which equity is being achieved under this code. The European Commission is actively negotiating quantitative import restraints on steel with some 19 exporting countries. Most of these restrictions were in effect in 1978 and are now being extended into 1979. They are based on tonnage limitations as well as price undertakings. In 1979 an estimated 85% of steel imports into the EEC were covered by these price/tonnage restrictions.

We are advised by U.S. negotiation officials that this pervasive scheme of European Community steel import restrictions would not come within the purview of the Safeguards Code, since these restrictions are not declared by the EEC to be Article XIX-type actions. Nevertheless, it is our understanding that the United States specialty steel quotas would have to be notified under the Safeguards Code and would thereby be subject to the provisions of the Code.

In our view, this result under the Safeguards Code would constitute a blatant and unjustifiable dual standard. It is the essence of the continuing frustration encountered by our industry in trying to contain the trade diversionary measures employed by other steel producing countries.

Following are our comments on the specific issues raised by the Subcommittee:

1. *Developing countries.*—Not all developing countries should be accorded special and differential treatment insofar as steel is concerned. Steel industries of many developing countries can be considered to be highly competitive in the world marketplace. As in the case of generalized preferences, a "competitive need" formula should be built into U.S. domestic implementing legislation to insure that special and differential treatment is accorded only to countries whose industries truly deserve such treatment.

2. *Voluntary restraint agreements.*—If voluntary restraints are made subject to voluntary export restraints coverage under the code, it is important that (a) third countries be given adequate and fair opportunity to defend trade interests which they believe may be adversely affected by such restraint arrangements and (b) third countries be able to extract commitments from the participants to the inter-industry or voluntary export restraint agreements that any sign of trade diversion will entitle the third country to take off-setting measures to protect its trade interests. These conditions should be included in U.S. implementing legislation.

3. *Distinguishing between signatories and non-signatories.*—A signatory should be assured that a safeguard action—if taken in full regard of the code—will not subject it to retaliation or a demand for compensation by other signatories. As to non-signatories, safeguard action by a signatory should not be subject to phaseout or the other restraints that are applicable to signatories. Similarly, safeguard action should be permissible on a selective basis against non-signatories without the strictures for such actions that may be required of signatories.

In summary, the differentiation against non-signatories should rest in the area of remedy.

4. *Sections 201 to 203 of the Trade Act of 1974.*—The most important improvement that can be made in these sections is to provide for a fast track proceeding under which a U.S. industry could petition for a speeded up injury determination. While care should be taken to insure that such a fast track is not abused, the criteria should not be so stringent as to make the procedure unworkable.

5. *Unilateral action.*—If unilateral selective safeguard action is permitted under the code, the procedures should (a) distinguish between signatories and non-signatories and (b) entitle signatories to the rights of notice, consultation, public hearings and similar procedural rights.

6. *Definition of "domestic industry."*—In our view the term "domestic industry" or "industry in the United States" means any subdivision or portion of the commercial organizations in any section of the United States manufacturing, assembling, processing, extracting, growing, selling or otherwise producing, marketing, or handling articles or merchandise of the same class or kind as the

merchandise or articles imported. In applying the preceding sentence, there shall be distinguished or separated the operations of such organizations involving merchandise or articles imported from the operations of such organizations involving other articles of merchandise.

WHAT IS NEEDED

A higher degree of equity and reciprocity can and should be achieved, and this goal would be furthered if assurance or satisfaction is provided on the following points:

1. The Antidumping Act must not be amended in any way that would weaken its enforcement or require domestic complainants to sustain a greater burden of proof than currently exists today with respect to casualty, injury, and definition of industry. In fact, the Act should be strengthened and made more effective.

2. Under the Subsidy/Countervailing Duty Code:

"Material injury" must be defined in domestic implementing legislation to permit a showing of injury which need only be more than *de minimis;*

"Causation" must be defined in domestic implementing legislation to make clear that subsidized imports need not be a "principal" or "substantial" cause of the material injury;

Internal subsidies must be reachable without qualification under the procedures which deal with injury as well as those which deal with nullification or impairment or with serious prejudice;

The procedures must be made specific and the generalizations and broadly stated phrasing refined so that the result is not a grant of uncontrolled discretion and authority to the Executive Branch; and

The remedy provisions of the Code would permit a countervailing duty of less than the amount of the subsidy and in fact leave to the discretion of the Executive Branch the application of any remedy. This broadly permissive authority must be dealt with.

3. Under the Safeguard Code:

Criteria for import relief should be no more onerous than those under present U.S. trade law, and the code should not weaken or prevent use of domestic laws;

"Principal cause" should replace the causality test under existing U.S. law;

Regional market disruption should be fully recognized;

Provisional application of safeguard measures "in critical circumstances" should be included in domestic implementing legislation;

All existing quantitative restrictions should clearly be covered or clearly be excluded under the code, so there is certainty as to what measures the code is designed to reach; and

The phrases "actual and potential negative effects on cash flow" and "ability to raise capital or investment" should be included in the code, as well as in domestic implementing legislation, as factors to be examined in determining injury.

Domestic organization and procedures for the enforcement of U.S. unfair trade practice statutes, as well as for the administration of responsibilities resulting from the codes, must be revamped to insure the preservation of U.S. domestic and international economic interests.

In an effort to provide adequate statutory remedies, we have prepared a package of proposed amendments to our existing trade laws which we have titled the "Fair Trade Enforcement Act of 1978." It is a comprehensive and definitive document specifying the statutory changes we support and urge that you adopt. With your permission, we ask that the document be made a part of the record of these hearings.

Senator Danforth and several co-sponsors have recently introduced a bill that contains many of the improvements that we support. Moreover, other proposals relating to trade matters have been or will be introduced in the House and Senate.

We also understand that our legislative proposals will shortly be issued as a Committee print by the Trade Subcommittee of the House Ways and Means Committee. More than 30 industries, the AFL-CIO and several major national unions have endorsed a Congressional review of these proposals.

Our government and the domestic steel industry face critical times ahead as pressures mount to weaken U.S. unfair trade statutes by bending them into conformity with the codes. Moreover, the codes' language and implementing legislation could create major uncertainties of both substance and administration.

It is essential that American industry have clear and fair recourse against unfair import practices under U.S. trade statutes.

As the MTN and implementing legislation are addressed by the Congress this session, we hope you will support our proposals and the bills in which they will be incorporated. We are at a critical juncture in U.S. trade policy. We need and hope for the full support of this Committee in the months ahead.

Part III.—AISI Recommendations on Reform of U.S. Unfair Trade Practice Statutes

SUMMARY OF PROPOSED FAIR TRADE ENFORCEMENT ACT OF 1978

The act would amend four major statutes that regulate fair trade practices for those exporting goods to the United States:

1. the antidumping act;
2. the countervailing duty statute;
3. section 337 of the 1937 tariff act; and
4. the predatory dumping provisions of the Tariff Act of 1916.

These proposals are predicated on the proposition that world trade is desirable and beneficial in contributing to man's well-being by most efficiently allocating limited world resources only if trade is conducted fairly without nationalistic political intervention which would subvert otherwise appropriate economic trading activity.

1. The Antidumping Act

The antidumping act deals with the practice of imported goods being sold in this country at prices below the home market prices (or below the cost of production) in the exporting country when such sales cause injury to a domestic industry. All industrialized countries have laws designed to control such unfair pricing practices. Lax enforcement of the law as administered over the years has resulted in a system that is ineffective, complex, protracted, and difficult for a domestic industry to obtain relief from dumping practices.

(a) At the outset the amendment would provide a low threshold of proof by a petitioner to insure that Treasury would initiate a dumping investigation whenever the petition indicates likelihood that dumping is taking place. The proposal would repeal authority of the Treasury to refer the petition to the International Trade Commission for a preliminary injury determination since this has been abused by requiring an extraordinarily difficult burden of injury proof contained in the petition itself. Setting forth a minimum showing of the likelihood of dumping in the petition would eliminate the practice of Treasury that requires an American seeking relief to provide almost conclusive evidence of the existence of dumping and injury.

(b) The way the law is administered, even if dumping is found, the dumping duties are collected only on imports that come in after the tentative finding of dumping, which can be as much as 6 to 9 months after the notice of the investigation. Dumped imports that come in during that 6 to 9 month grace period escape the dumping duties, with the natural tendency that imports often increase significantly after a notice of dumping investigation and before a tentative determination is made. This is an obvious loophole.

The trade amendments would provide that there be a withholding of appraisement on goods imported into the country on and after the date of the notice of an antidumping investigation being undertaken by Treasury. This would permit dumping duties to reach back to the time the investigation was started in the event an antidumping violation is eventually found to have occurred. This amendment would assure that dumped goods could not avoid dumping duties and would serve as a stimulus for much prompter and fuller cooperation from the importers in providing the necessary information for a final determination at the earliest practicable date.

(c) As the law has been enforced in the past, there is an exceptionally long time lag between a dumping finding and the eventual collection of dumping duties. It is not uncommon for 3 to 5 years to pass from the time of an importation that is subject to an antidumping finding before any dumping duties are ever collected.

The proposed trade act would avoid this by the collection of estimated dumping duties immediately on all goods entering after an affirmative determination. The duties would be computed and collected on the basis of the initial margin of dumping found by Treasury and would be adjusted up or down on a periodic basis (but not longer than once a year); and in the event of overcollection of duties the excess would be returned, with interest, to the importer, or if under-collection the additional duties, with interest, would be obtained.

(d) A serious difficulty that has existed in the administration of the anti-dumping statute since its passage is with item-by-item ex parte dumping adjudication that occurs on every entry after a finding of dumping by Treasury. As the law is enforced, Treasury makes an affirmative finding of dumping, but the amount of dumping duty to be collected on each entry is thereafter readjudicated item by item, port by port, forever in the future. And at such entries the determination of the margin of dumping, if any, is adjudicated only between the Customs officials and the importer. This has resulted in excessive delay; significant narrowing, or indeed elimination, of dumping margins by the importers being able to privately contend without contest that circumstances have changed in the home market in such infinite variables as home market prices, export prices, differences in circumstances of sales, differences in quality of the product, etc.

To simplify the procedure, provide for prompt collection of the duty and eliminate the secret adjudication between importer and the Customs officials, the trade act would provide for the dumping margin found by the Treasury in its initial determination to apply to future entries; notice would be given by Treasury of its intent to collect different dumping margins on entries after the original determination, and this would afford the affected members of the industry an opportunity to be heard. It would assure prompt collection of duties in the amount of the original margin of dumping except as proper evidence were introduced to reflect that the margin had truly changed.

(e) In the past there has been an uneven, uncertain, and at times almost capricious approach towards the determination of injury to a domestic industry. The trade amendment would provide definitions of the term "industry" to correspond to a segment of American manufacturing that was reasonably co-extensive with the dumped imports, and the act would set out with rather great detail the elements to be looked at in determining inquiry. It would thereby eliminate the oftentimes excessively restricted interpretation of injury that has been found in ITC decisions from time to time and would assure that a more realistic and fair approach to injury would prevail in ITC decisions. By means of such detailed codification, it would make the decision-making process more predictable and eliminate the wide fluctuations that have occurred over the years based upon changes in the composition of the Commission.

(f) The practice has grown up of terminating dumping findings without adequate safeguards. It is counterproductive to place a heavy burden on industry to prove dumping and then after a relatively short interval allow the Treasury to end the dumping finding. The amendments would provide a requirement that dumping must not have taken place for a number of years before Treasury has the power to entertain the dismissal of a dumping finding; Treasury may then dismiss a finding only upon receiving assurances from the importers, establishing a monitoring mechanism to assure that dumping does not recur and establishing a procedure whereby the dumping finding may be reinstated if dumping recurs during the period of monitoring.

(g) Effective in 1980 jurisdiction for the administration of the antidumping act would be vested exclusively with the International Trade Commission. Present jurisdiction is bifurcated between Treasury determination of less than fair value sales and the ITC determination of injury. Too often the antidumping act is enforced more on the basis of political considerations than on the grounds of legal rationale and economic facts.

To minimize the political influence, removal to a more autonomous commission, such as ITC, is appropriate. The record of Treasury over the years and under all administrations has reflected at best a laxity of enforcement and at worst an outright hostility toward effective enforcement. The ITC record on injury determinations has at times been quite inadequate. However, the detailed standards set forth in the amendments on defining injury, evidentiary facts to be looked at in determining injury, and the definition of industry should markedly reduce the aberrational tendencies at certain periods of time for the Commission to find injury only when an industry is mortally wounded. The ITC now has wide jurisdiction over a vast area of trade matters, including divided responsibility of enforcing the antidumping statute, exclusive jurisdiction to administer § 337 of the Trade Act, and injury determination under the countervailing duty statute where required, as well as investigations into wide-ranging trade matters, tariff classifications, and customs duties.

2. Countervailing duty statute

The act would provide corollary changes to the countervailing duty statute comparable to those imposed under the antidumping statute in the following areas:

(a) Threshold question on burden of accepting petitions for initiating an investigation.

(b) Withholding of appraisement on all goods entering on and after the publication of the notice of investigation.

(c) Assessment of countervailing duties based upon the amount of bounty or grant found to have existed by Treasury in its original affirmative determination.

(d) Collection of estimated countervailing duties and avoidance of *ex parte* adjudication of the margin of countervailing duties.

(e) Definition of industry and injury where required.

(f) The time for countervailing duty investigations would be shortened from 12 months to 9 months.

(g) A definition of the terms "bounty or grant" would be provided under the amendment to overcome the extremely limited and strained approach of Treasury toward the meaning of subsidy. These definitions would set forth standards that would assure a liberal approach to the meaning of subsidy that would, among other things, eliminate the artificial and economically unjustified distinction between rebates of indirect as opposed to direct taxes. The definitions would reflect the current state of the world wherein many industries of the world are either government owned or government supported to an extent that international trade need not be conducted on a sound economic basis. These definitions are designed to identify all forms of subsidy as unfair forms of competition where government-supported imports compete with private industries in this country.

(h) Jurisdiction over the enforcement of the countervailing duty statute would be transferred to the ITC in 1980 for the same reasons expressed for transferring that authority under the antidumping statute.

(i) Strengthening of judicial review. Judicial review of the decisions made at the administrative level under the antidumping and countervailing duty statutes would be further bolstered. Judicial review would cover a decision not to begin an investigation, a determination of whether there were less than fair value sales ,a finding of whether there were subsidies, and the finding of the amount of antidumping or countervailing duty to be imposed.

3. Amendments to section 337 of the Trade Act of 1930

Section 337 is the statute dealing with predation in commerce, which has been singularly ineffective because of the power of the President to ignore any relief ordered under the statute by the ITC.

(a) This statute deals with predatory marketing practices analogous to the unfair methods of competition concept contained in Section 5 of the Federal Trade Commission Act. It is administered by the ITC, but any decision on relief determined by the Commission is subject to the rather unfettered discretion of the President, who may chose not to implement the ITC finding and recommended relief. The Trade Act amendments would require that any presidential rejection of the ITC recommendations would have to be ratified by Congress within a specified period of time, otherwise the Commissions determinations would become effective.

(b) The amendment would provide private damage actions to injured parties against those found to have violated § 337. This would provide private remedial compensation that had not previously been contained in this statute.

4. Amendments to the Revenue Act of 1916

The predecessor to the 1921 antidumping statute was the criminal dumping act contained in the Revenue Act of 1916, which has been completely ineffective and has fallen into almost complete disuse.

The criminal aspects of the statute would be eliminated. Concurrently, the amendment would abolish the requirement that to obtain relief under the statute it is necessary to show specific intent to injure a domestic industry by the substantial margins of dumping. Under the amendment there would remain private damage action remedies available to those injured by such significant and persistent dumping.

Senator RIBICOFF. Mr. Denison?

STATEMENT OF RAY DENISON, ASSOCIATE DIRECTOR, DEPARTMENT OF LEGISLATION, AFL-CIO

Mr. DENISON. The AFL-CIO welcomes this subcommittee's invitation for early comments on the multilateral trade negotiations. The legislation that will be proposed to Congress to implement the agreements reached in Geneva can affect every American. These agreements can affect Federal, State, and local laws, and the regulations that carry out those laws. These negotiations are different from any in the past, because far more than imports and exports are involved. The everyday life of the United States can be affected by whatever the President agrees to and whatever the Congress decides.

In order to assess the economic impact of the agreements, the whole package should be in the hands of the Congress and the hands of anyone advising the Congress. In order to assess the impact of any part of the agreement, the details must be known. Unfortunately, the final package has not been assembled nor have details been made available.

Therefore, it is difficult to comment at this time. It is likewise difficult for the Congress to make proper evaluations and decisions on the basis of what has been made available thus far.

Unions know very well that details are important. For example, three words—"in major part"—were used to interpret the test of injury from imports in the Trade Expansion Act of 1962 and to prevent any relief for most injured industries throughout most of the 1960s. We watched the jobs go and we watched the Nation try to pay the cost. We are still seeing the results of interpretations of "details" in trade hearing after trade hearing about impacts of imports on U.S. industries and jobs.

The AFL-CIO recognizes the importance of working with the Congress and the administration to make sure that any legislation which is proposed will effectively carry out the U.S. interest to assure the promotion of a healthy economy at home and to assure that hard-won legislation gains of the past are preserved.

Legislation to implement agreements that took more than 4 years to negotiate should be drafted with utmost care and precision. We must insure that U.S. rights—both domestic and international—are protected. Therefore, the timing of the legislation should not be rushed.

At this point, the agreements raise more questions than answers, as this committee has implied. For labor, new questions develop almost daily as additional information is received.

One of the first and primary questions is: How many codes are there in this package and how do they interrelate? How many agreements are there? And, what is the difference between them?

There is a code on subsidies and countervailing duties. But it is not clear to us whether there is a code or an agreement on antidumping. Many unions and industries have worked on proposals to improve U.S. antidumping laws for several years. Will these proposals be part of the implementing legislation?

The President's message to the Congress referred to an agreement on aircraft. This could affect the jobs of thousands of Americans and the survival of hundreds of U.S. businesses large or small. It could affect the future of U.S. technology in many fields and jobs in many parts of the Nation. What is in it?

The same questions can be asked about other agreements, such as those dealing with wheat, dairy, meat, coarse grains, and other products.

Second question: What does the package mean legally? Does U.S. law prevail? Does the international code prevail? Many of the codes have different international surveillance or discipline mechanisms. Who will make sure that the U.S. Government will actually represent a U.S. industry or group of workers who want to bring an action under an international agreement?

Third question: How does the enforcement procedure work? How can a group of workers affected by imports enforce their rights? What precisely is the procedure to be followed and how does it work?

Will workers have to go from code to code? We have been unable to get a clear answer to this question. If the procedures do not result in swift action, a great many Americans will learn that a right delayed is no right at all.

Even under present procedures there is great uncertainty and delay.

For example, last week lawyers for several U.S. industries, including fasteners and valves, filed complaints to enforce the U.S. law on countervailing duties because the Japanese Government is subsidizing its medium and small businesses to compensate them for losses from the rising value of the yen. The operation and effect of the high yen measures law must have been known to the U.S. Government. This is a subsidy. Most such subsidies have not been offset even though U.S. Government officials know about foreign subsidy or dumping practices that may require action under U.S. law.

These great problems now exist under what is a domestic law. What will be the magnitude of the problem when an international procedure is added to existing law?

Fourth question: What is a less developed country and what additional special rights are being granted to these countries? The United States is seriously in deficit in trade with most of the world. Many countries considered less developed have highly sophisticated technology and have become effectively industrialized. Multinational firms get the benefits of provisions enacted by the United States to aid these less developed countries.

How many of these countries will sign the agreements, and what will be the impact? If there are special rights for certain countries which sign codes, how will these special rights be enforced?

Fifth question: What actual safeguards will there be for American industries and workers in the safeguards code? Will the present test of injury from imports be maintained or improved? For the past 4 years, the United States has had a relatively loose test of injury—that is, that imports are a substantial cause of injury. In that time, only a few industries got any relief at all. Specialty steel, shoes, color TV, CB transceivers, fasteners, are well known cases. That relief, which involves restraints on foreign exports, could be affected by the code. But we do not have information about what has been negotiated.

American workers believe that too little relief, too late, has come for American industry. The Trade Act of 1974 provided for relief to injured industries on a regional basis, such as shoes in New England or steel on the West Coast. Enforcement of this provision has not been adequate. But it was an improvement over previous law. Now, there is a possibility that this provision could be adversely affected by the safeguards code. There is even a question that an industry that spans national borders can be considered "the industry" for injury determination. This is not appropriate for the United States.

For American workers, the tests of injury have been used to create a bramble bush of technicalities that do everything but safeguard their jobs or their industries. Electronics workers remember that the import of TV parts and the import of TV sets were considered quite different items and therefore the black and white TV industry could get no relief. The injury to an industry should be based on realistic and loose criteria—not on a set of factors. The criteria should recognize that if America loses part of an industry—upstream or downstream—it may be unable to develop new technology in the whole industry.

Sixth question: Should U.S. customs valuation law, the easiest among nations in terms of assuring access to its markets, be changed in the hope that others will give more access to their markets? What can be done if they do not change their practices? Why should the United States be one of the few nations of the world that values its imports on the basis of the foreign port value while most countries value their imports by including the costs of shipping, insurance, et cetera—the landed value—or c.i.f.?

And of equal importance, how can the United States improve its customs valuation to assure that products dumped in the United States or subsidized by State-controlled economies will be fairly valued for dumping and other purposes?

These are just a few of the questions related to the issues raised by the committee. We feel we must also raise some other questions that may be related to this legislative package.

What happens to United States laws and regulations for defense and domestic preferences for procurement—the so-called "Buy American" laws? Why should U.S. taxpayers' jobs and production be an international trade issue? If the code on Government procurement—which is being negotiated—merely affects countries which sign it, how can it be enforced?

Who can determine, for example, where the parts of a product are made? If France signs the code and gets a contract and makes most of the product in a country or countries which have not signed the code, what rule of origin will assure that the code is enforced? How will these provisions apply to State laws? Will our defense contracts be open to all bidders, Communist and noncommunist alike? And how can that be enforced?

The President's message to Congress of January 4 said that "national security considerations" would exempt certain items from the Government procurement code. How will these very complicated relationships be identified?

Further, what happens to safety, health, engineering and other standards for products—standards now in existence in Federal, State and local government laws and regulations? Will they be subject to change under the standards code being negotiated? What if another country protests a U.S. standard? What kind of retaliation is proposed? What can the United States do if another country maintains its standards that shut out U.S. exports?

At this point, general answers to some of the Committee's specific questions will serve as a preliminary response:

The AFL-CIO believes that implementing legislation for the multilateral trade agreements should assure swift action against unfair trade practices. U.S. law on countervailing duties and subsidies should be improved to assure: (a) action by the Government on its own motion when it knows a foreign product is being shipped to the United States in a subsidized fashion; (b) speedy investigation; (c) swift and certain enforcement; (d) fair penalties; and (e) removal of subsidy before penalty is removed.

United States tests of injury should allow swift action for any industry, in whole or in part, to assure that the U.S. manufacturing base is diversified and industrial growth is encouraged. Regional tests of injury should be included in such a way that realistic remedies will be made available.

Safeguards should be available to U.S. industries and remedial action should be assured any industry threatened in whole or in part by unforeseen imports. Curbs should be applicable to one or many countries.

U.S. imports should be reported on a c.i.f. basis. Trade between related parties—that is, parts of the multinational firms in another country may ship to the United States and value its own shipments—should be valued as arms-length transactions.

Title V of the Trade Act of 1974 should be repealed as obsolete. Needy countries should be given special help—specific aid, but not for export-led development, nor at the expense of U.S. jobs, technology and production. Items 806.30 and item 807.00 should be repealed also.

Implementing legislation should guarantee workers the right to judicial review.

Defense procurement should give preference to U.S.-made products and services to U.S.-manned operations whenever possible.

Agreements with nonmarket economies should have special rules to regulate imports—to protect against dumping, political pricing, barter and other practices which violate liberal trade principles.

Enforcement of U.S. laws now on the books and improvement of laws for U.S. standards should be assured. Interference with building codes, consumer protection, OSHA, or other similar laws and regulations should not be allowed.

U.S. sovereign rights should not be breached in implementing legislation for any executive agreement in international trade passed by the Congress.

The AFL-CIO will be making more specific policy determinations in the near future and will continue to work with the Administration and the Congress on the implementing legislation.

Mr. Chairman, we would offer this in line with your suggestions that questions be referred to you for query to Ambassador Strauss.

Senator RIBICOFF. Let me ask you, how would you respond to the same question that I asked Mr. Foy with our rate of productivity almost zero per year as against the Japanese at 8 and the West Germans at 6, how do we ever compete and what do you see as labor's obligation as increasing the productivity in this country?

Mr. DENISON. The productivity figures usually used to deal with the entire nonfarm sector of our economy. While I do not have the figures with me, my recollection is over the past 10 years productivity in the manufacturing sector has been as good as, if not better than, other industrial nations. The decline in productivity has been essentially in the service sector in the retail services, finance areas, and so forth.

But our feeling, of course, is we feel that unit labor costs as a part of manufacturing have actually increased less in the United States than they have in other industrial countries. I happen to have here a publication by the conference board which shows unit labor costs in the past 10 years in manufacturing in the United States rose approximately 50 percent while at the same time, unit labor costs in Japan and Germany went up 300 percent.

So in that area, the contribution of labor costs to productivity in the United States has been much less than in other industrial countries and, of course, we feel that a worker with a shovel, of course, cannot produce as rapidly as a worker with a tractor.

If he has the tools, if he has the modern machinery, of course he can produce much more.

Senator RIBICOFF. What comment would you make on the question of the accelerated rate of depreciation or larger invesment tax credits? If my memory serves me right, labor usually opposes such measures when it comes before the Finance Committee in the Tax Code.

Do you think it adds any credibility in trying to increase our rate of productivity?

Mr. DENISON. As you know, Senator, the most recent tax bill had very generous provisions in the capital gains area that were supposed to increase investment so that we would have greater industrial expansion.

Senator RIBICOFF. Mr. Miller of the Federal Reserve Board said that was the least important factor in increasing productivity. If my memory serves me right, he talked about the rate of depreciation and the investment tax credit being the greater factors in producing productivity, not capital gains.

Mr. DENISON. I think we all remember witnesses who came up here from industry saying that capital gains was going to have a tremendous impact. Yes; we have been concerned about the investment tax credit, but it is in the law, it is there, and businesses rely on it and it has not been successful and apparently has not worked out the way they insist it would work out.

We feel the problem here in many instances is not necessarily whether or not we have an improved industry. We have seen instances where modern facilities—brandnew television plants, for example, in Tennessee, RCA—was dismantled and shipped in its entirety to Taiwan. That was the most modern color television producing plant in the United States. It just left.

It is not always that a new, modern facility of its own will answer the problem if there exists a subsidy to foreign exports that makes the U.S. color TV facility unable to compete. And, of course, if the facility itself has the problem of being in competition with itself, that is a greater problem. If a multinational locates facilities abroad; then its domestic plant loses its foreign market then, of course, its unit costs are going to increase because its productivity is probably going to go down.

Senator RIBICOFF. A very interesting thing has been happening, and it appears in your figures. The cost of production now is going up, in the European Community and Japan as against the United States.

There is a reverse flowback from multinationals abroad into the United States where they can manufacture at a lower labor cost, so there is a great opportunity here for the United States to start recapturing markets throughout the world because of increased costs abroad.

All we need to do is increase our productivity to compete with the Japanese and the West Germans. The figures that you give me, sir, are contrary to every set of figures I have seen or studied in the last 2 years and I would like you to submit to me a chart of the figures that you would submit, because every comparable set of figres that I have seen is absolutely contrary to your testimony.

[The following was subsequently supplied for the record:]

AMERICAN FEDERATION OF LABOR AND
CONGRESS OF INDUSTRIAL ORGANIZATIONS
Washington, D.C., March 12, 1979.

Hon. ABRAHAM RIBICOFF,
Chairman, Subcommittee on Trade,
Senate Committee on Finance
Washington, D.C.

DEAR SENATOR RIBICOFF: During our testimony before your Trade Subcommittee on the MTN proposals, you indicated concern over the productivity of U.S. workers. The AFL-CIO is pleased to respond to your request that we furnish data concerning the productivity of Americans in the workplace. We believe that data from the Bureau of Labor Statistics, the West German Dresdner Bank and the Conference Board support our statements before your subcommittee that the American worker in manufacturing provides greater productivity, by far, than workers in other industrialized countries. America suffers a trade deficit and an undermining of our industrial society but not because the American worker is lazy or unmotivated. He is a hard-working, major producer who is victimized by other forces, such as foreign subsidies and trade barriers, which enable foreign, less efficient producers, to dump goods into our markets and effectively close out our products from foreign markets. This country's major imports now are manufactured products, despite the U.S. worker's outstanding productivity. The blame for the loss of the U.S. role as a major manufacturer and exporter lies in a direction other than its worker productivity.

Data shows that in the manufacturing sector, U.S. worker productivity is not slowing down, but that manufactured goods are a declining share of total output and manufacturing now accounts for only 29 percent of total hours of work in the private business economy. See attached sheet.

Productivity in the manufacturing sector, in terms of output per worker hour, increased 3.5% in 1978. For all of the 1970's manufacturing productivity growth averaged 2.4% per year—less than the 3.0% average of the 1960's, but the same as the 2.4% average yearly growth of the 1950's. The respectable 1970's rate of manufacturing productivity growth came despite two back-to-back recessions and an underutilization of plant and equipment during most of the 1970's.

The slowdown in measured productivity for the total private business economy results primarily from non-manufacturing data which do not have the reliability of manufacturing data. The data are so poor for construction, finance, insurance, real estate, services and other sectors that the slowdown in productivity may be entirely a measurement problem rather than an actual slowdown.

The Conference Board in its Worldbusiness Perspectives of October 1978 noted that U.S. export prices were increasing less than other major industrial nations and unit labor cost increases in manufacturing were less than other major industrial nations, by a large margin. In the period from 1968 to 1977, while U.S. manufacturing costs increased from a base of 100 to a figure of 160%, Canada was increasing to 175%; France to 200%; the United Kingdom to 225%; Italy to 240% and Japan and Germany to more than 300%.

Also, in its Economic Quarterly, published in August 1978, the Dresdner Bank of West Germany concluded that the American worker produces 24% more than the German worker and 32% more than the Japanese worker. And from 1967 to 1977, unit labor costs have risen much more slowly in the U.S.A. than in such other major industrial nations, as England, France, Sweden, Italy, Germany and Japan.

In view of these divergent reports, we believe that it can be concluded that the American worker is at least as productive—and probably more— than his equivalent in other industrial nations. The problems of America's trade deficit and America's slippage in trade in manufactured goods lies not with its workers but in policies that encourage erosion of our industrial base and trading partners' policies—including subsidies, non-tariff barriers, customs practices and state-sponsorships that effectively chill import of U.S. products and encourage the export of their manufactured goods.

Unfortunately, from what we have been able to learn thus far of the proposed MTN codes, there is little to be optimistic about in terms of changing this tilt.

Sincerely,

RAY DENISON,
Associate Director.

PRODUCTIVITY GROWTH BY INDUSTRY [1]
[Percent change per year]

	1949–59	1959–69	1969–77
Manufacturing	2.4	3.0	[2] 2.4
Transportation	2.9	3.6	2.3
Communication	4.8	5.0	6.2
Agriculture	6.2	5.5	4.9
Electric, gas, and sanitary services	6.6	4.7	1.7
Services	1.3	1.9	[3] 1.2
Finance insurance and real estate	1.6	1.2	[3] 1.2
Retail trade	1.8	3.0	1.3
Construction	3.0	1.9	[3] −1.9
Mining	4.1	4.3	−3.2

[1] Data for manufacturing and agriculture are from yearly indexes. All others are from least squares trend lines.
[2] Includes 1978.
[3] BLS does not consider these data to be of sufficient quality to be published separately. The data are released only as a means to aid in understanding the movements in producitvity measures.

Source: Bureau of Labor Statistics.

Mr. DENISON. I think the problem lies when they use nonfarm figures and mix manufacturing in.

It is not always that a new, modern facility of its own will answer the problem if there exists a subsidy to foreign exports that makes the color TV unable to compete. And, of course, if the facility itself has the problem of being in competition with itself, that is a greater problem. A multinational located facilities abroad; then the domestic plant loses its foreign market then, of course, its unit costs are going to increase because its productivity is probably going to go down.

Senator RIBICOFF. A very funny thing has happened, it comes into your figures. The cost of production now is going up. In the European Community, Japan as against the United States. There is a reverse flowback from multinationals abroad into the United States where they can manufacture at a cheaper labor rate, so there is a great opportunity here for the United States to start recapturing markets throughout the world because of increased costs abroad.

All we need is increasing our productivity to compete with the Japanese and the West Germans. The figures that you give me, sir, are contrary to every set of figures I have seen or studied in the last 2 years and I would like you to submit to me a chart of the figures that you would submit, because every comparable set of figures that I have seen is absolutely contrary to your testimony.

Mr. DENISON. I think the problem lies when they use nonfarm figures and mix manufacturing in. When you separate out manufacturing, it is not that bad.

Senator RIBICOFF. Senator Heinz?

Senator HEINZ. I think you will see in the last 3 years nonfarm manufacturing productivity has returned to the levels of the 1950's and 1960's when it was good.

Senator RIBICOFF. Senator Roth?

Senator ROTH. As we look down the road, it seems to me that one of the things that this country has to do is to be in a position where it can better penetrate foreign markets. That is where a lot of the growth in the future is going to come.

Along the lines of what Senator Ribicoff has been asking, I wonder what recommendations you might make to this committee that would make us more competitive, put us in a better position to sell American-made products abroad? One of my concerns is that we do not just want to export raw materials because that does not mean jobs for American workers.

I wonder if the AFL-CIO would have, either today or later, any recommendations as to how we could do a better job here in Congress of developing the circumstances where we can compete better.

The future markets, I think—where future growth is going to be, in large measure—is going to be a problem.

Mr. DENISON. Miss Jagger?

Ms. JAGGER. Senator, I agree that there will be market growth abroad, and I agree all the factors that have been raised are terribly important, but I think it is important to remember that most of the markets abroad are relatively closed and their governments intend to keep them closed, relatively speaking, to the United States.

I am not saying that there has not been progress in reducing some barriers abroad, but I am saying that the attitude of the government is quite protective in most countries, and a recent chart in the New York Times showed that, in fact, the industry that was competing with American industry was, in fact, the foreign government in an increasing number of instances.

While I am very concerned about the ability of the United States to pursue market penetration abroad, I think it is also important for the United States to assure that we have production here. Productivity is simply not that good in a great many state-controlled economies, but they dump here at will, and we seem not to act upon it.

It does not matter how much your productivity improves in the United States and how much the economic situation changes, if the Japanese Government decides to subsidize small business to compensate for the end appreciation.

Most Americans are unaware of these problems, and they assume that the reason that we are not penetrating foreign markets is because American industry and American labor are not doing their share. I really cannot say that I agree that that is true. I think that we have done a phenomenal job in terms of the trade arrangements that are available to them relative to the trade arrangements in other countries.

Senator ROTH. It seems to me that we have three different problems here. One, of course, is American productivity, our ability to compete. The second problem, which you have touched upon, is the access to foreign markets. The third is the unfair trade practices of foreign governments in reaching our markets. They are all interrelated.

I have to agree with you.

Going back to my principal question, I do think it is important to have any recommendations AFL-CIO might care to make and how we can increase productivity or become more competitive. In your testimony you deal at considerable length with what I call the lack of enforcement of our workers' rights and company rights both.

This is a matter that does concern me because I do not think we have been aggressive in protecting these rights in contrast to foreign governments. I wonder if AFL-CIO is familiar with the legislation introduced by Senator Ribicoff and myself, as well as others, to create a trade ministry?

We feel that this Government is not doing a good job in promoting the sale of American-made products abroad and is not being aggressive in protecting the rights of our people with respect to foreign goods imported here.

I would be interested if you have studied this legislation. If not, I would be interested in having your comments at a later time.

Mr. DENISON. Senator, we are aware of the legislation you have introduced and we are examining it. We have not taken a specific position on it. We are always very much interested in any program involving Government reorganization. Sometimes it is good; sometimes it is bad. We always go in with mixed feelings. But certainly our feeling is that I would have to pretty much echo the early witness, that we would feel that wherever the job is best done in the Government, we would support it, wherever that may be, and unfortunately many times the best intentions in a new bureaucracy, or an old bureaucracy, do not always bring about the results we would hope for, but we could continue to examine it and we will comment on it.

Senator ROTH. As you probably know, in Government Operations, they will have hearings in the near future and at that time they would very much appreciate hearing your view. Thank you.

Senator MOYNIHAN. Senator Danforth?

Senator DANFORTH. From your standpoint and my standpoint, the basic issue is jobs; is that not right?

Mr. DENISON. In a diversified industrial nation.

Senator DANFORTH. The basic question is jobs and opportunities for the American people, 5 years, 10 years down the road.

Mr. DENISON. Yes. I qualified that earlier, because I do not look upon this as an agrarian society where we would all be happy tilling the soil.

Senator DANFORTH. Absolutely, but reasonable job opportunities for people down the road. Right now, we have a trade deficit of about $28.5 billion a year. Last year, we had a trade deficit of 26.5 billion a year.

Therefore, what we are essentially doing is exporting our wealth and we are exporting jobs, and we are closing down opportunities for people. You go through plants of affected industries and you see people who have lost their jobs. You talk to people in those plants. They had 600 people a year ago, 300 today, and we are talking about trying to increase those jobs and expand those opportunities. Right?

Mr. DENISON. Indeed.

Senator DANFORTH. It seems to me if you are approaching the trade question, you approach the totality of the trade question. You have focused on the problem of dumping and the problem of subsidies. Very important.

If it were performed within the United States, dumping would be a violation of the Robinson-Patman Act, an unfair trade practice. Now, the enforcement of the 1921 Antidumping Act is lousy, is that not right? Terrible.

So what we should do, the first thing we should do is try to protect our jobs, not from all foreign competition but from unfair foreign competition by devising procedures which will better our enforcement practices against unfair trade practices. Is that not basically your testimony?

Mr. DENISON. That is one of our concerns that we were asked to address; yes.

Senator DANFORTH. Second, we are being shut out from foreign markets. We would like to be able to sell abroad but we are being shut out. We are being shut out by a variety of guises. We are being shut out by customs practices standards.

I take it the thrust of the MTN has been to reduce these nontariff barriers so that, to the extent that we can do this—and at least this is worth trying, is it not? To try to reduce the nontariff barriers so that we would have at least the legal possibility of having access to foreign markets, right?

Mr. DENISON. That is true conceptually. We are in full agreement thus far.

Senator DANFORTH. Then it seems to me that the third part of this package has to do if we can get rid of the legal barriers, the restraints, and that is the whole point of what is going on and has been going on in Geneva. And what can we do to be more competitive in a world market?

Now, right now most Americans do not even care about doing business abroad. They do not even think about doing business abroad. How can we encourage them to think about it? How can we encourage them to do it?

What sorts of incentives can we fashion in order to make it possible for us to be competitive, assuming those markets are accessible, right?

Mr. DENISON. Yes.

Senator DANFORTH. That, in turn, involves I do not know what, but if we are in the business of selling advanced technology then we should have advanced technology to sell. We should be investing in research and development.

If the problem is productivity—and I guess we will have to see the figures to determine that—then we should increase our productivity.

I mean, it seems to me that the basic question is reducing this $30 billion deficit. One approach is to say, well, let's close the doors. Let us stop competing with the rest of the world. America is not what it used to be, folks. We cannot do it, so let us just ring down the curtain on our act.

The other approach is the opposite. The other approach is to say, let us try to shut out the unfair competition, better police it, remove the barriers to our doing business abroad, and then provide some positive incentives which will encourage us to do a better job.

That is the basic issue that is before us, is it not?

Mr. DENISON. I think if all of those objectives were carried out and laid before us and we had an opportunity to examine this package and achieved all of these goals, I think there would be no problem at all, but I do not think that is quite the real world that we are living in realistically and that, I think, is the basis for the questions that we raised in our testimony in terms of what will be the impact of these various cuts. The details, as we point out, are very important.

We can all conceptualize, but when we get down to the details, that is the place where we determine whether those people in those plants are going to have their jobs, or not have their jobs.

The problem over the last few years with the $30 billion trade deficit, when you look at it, people say it is oil, but when you look at it, it turns out to be manufacturing goods that we are importing and the shift from being a consumer of our own manufacturing goods is what is most worrisome to us and why I began my response to you by saying I did not want to see us return to being an agrarian nation.

We are seeking the same goal, but we have many, many questions and many, many problems.

Senator DANFORTH. We are going to have months of going over the specific questions just to make sure we are moving in the same direction, that we have the same objective. My view is, with respect to the whole economy, the time has come to get the fight out of our pants.

We can talk about productivity for the past 3 years. The fact of the matter is, as a percent of our gross national product, we are investing less in research and development and less in new plant and equipment than we used to invest, and this is where you are talking about our wealth in the future. This is where you are talking about the job potential of the American worker and his family, not just today, but 5 years, 10 years, 20 years down the road. That is where we are falling behind.

Ten or fifteen years ago, the United States—we used to say we had all of this know-how to sell to the world, that we were way out ahead and nobody could compete with us. Now everybody can compete with us. Why?

Mr. DENISON. A few years ago we came before this committee and testified at that time to the sale of a missile called the Thor-Delta missile and it was used not for war purposes, but was used for satellite purposes. That missile was our latest technology. We sold it to the Japanese for $100 million.

They made a quantum leap into the technology of satellite operations and they set it up and they no longer use our launching facilities here. They no longer use this particular facility that we have. Modern technology, balance of payments, income, all as a result of that, but instead we sold it out.

So the R. & D. there that everyone in this room helped pay for was sold off by a private corporation and the United States was a loser. There was a perfect example of R. & D. We all paid for it. We thought it was modern technology, but we sold it.

Senator DANFORTH. Therefore, what is the lesson? Is it that now is the time to "hunker down?"

Mr. DENISON. We never said hunker down. We always said we were for trying to expand the trade. We realize a large number of American workers are involved in export trade, but we think there is a vast difference between that kind of trade and what every witness has thus far said, where we are competing against governments, where they are going to subsidize, where they are going to maintain an industry in operation and production regardless of the costs simply to provide jobs.

Here, when a company can no longer make a profit, it just shuts down and that is it. There is no place to turn.

I am not saying that is necessarily what we want to do, but the ball game is just so different in terms of competitiveness here that regardless of what incentives might be made available for export programs, you cannot do it if the market is closed to you. You cannot land that automobile in Japan and expect it to be put on the streets the next day, the way you can land a Toyota in Baltimore and have it in the salesroom the next day. The obstacles are just overwhelming there.

Yet, on the surface, the argument can be made, well, it is easier to just send it over and we will put your automobiles in the showroom. But the loan program, the exception program, all of the various obstacles are there making it very difficult.

Senator MOYNIHAN. Senator Danforth, if I could just point out that we have a vote on and I know that Senator Nelson and Senator Matsunaga and Senator Heinz and you have not finished.

Would it be the preference of the committee that we recess at this moment and come back, and ask Mr. Denison and Miss Jager to stay?

Senator NELSON. Why do you not just keep the hearings going and we can run over and vote and come back? I have some appointments.

Senator MOYNIHAN. We will just keep going. I hope you will understand that if we just get up and leave, it is not due to any inattention on our part.

Senator Heinz?

Senator HEINZ. Thank you, Mr. Chairman.

Mr. Denison, are you familiar with the amendments brought forth by Mr. Carlisle and his group earlier today on countervailing duties?

Mr. DENISON. I read the testimony for the first time. I am not familiar with it.

Senator HEINZ. A couple of the more important of the proposed amendments have to do with the suspension of liquidation during an investigation of the need to impose a countervailing duty, a suspicion of subsidy.

Under present law, assessment of duties is prospective only. We never go back and really impose a fine from the point at which the violation occurred.

Do you support the basic principle, which is that punishment should essentially be levied from the time that the damage starts?

Ms. JAGER. We do not have a specific position on it, Senator. We have called for effective relief. I think that so far the federation has emphasized provisional duties rather than an action immediately as the injury takes place, because actually while it might be useful to have it retroactive for punishment purposes, our major concern is making sure that the industry is not destroyed.

So the provisional measure is of at least equal importance to us as the retroactive penalties.

Senator HEINZ. I do not know if I am familiar with your concept of provisional duties. At what point and in what way are they imposed?

Ms. JAGER. I do not believe they are now.

Senator HEINZ. Would they be?

Ms. JAGER. I think they could be under some conditions, under some of the proposals that are now being made, both in terms of implementing legislation and in discussions in the code. The idea is that there is some preliminary evidence of the injury, the unfair injury, that you can take provisional actions. Several other governments do this that are dumping, for example, instead of waiting until the dumping takes place and all the tests are met.

They impose the duty and it is returnable if, in fact, the injury has not come from the practice that is charged.

Senator HEINZ. I think that you and Mr. Carlisle's group are driving at largely the same thing. I think you are doing it a little differently.

Ms. JAGER. Generally speaking, we tend to go along with most of the recommendations.

Senator HEINZ. Are you concerned about the requirement that we had agreed to in the countervailing duty subsidies code, that an injury test be a part of it?

Mr. DENISON. Yes; we have been and it is part of our concern. Our position is a very simple one. If it is unfair trade, and a subsidy is certainly unfair trade, then it is prima facie that it should be sufficient.

Senator HEINZ. On dumping, which you have discussed, would you generally favor a speed up of the investigatory time table?

Mr. DENISON. We are for a speedup of all investigatory time tables; yes.

Senator HEINZ. Would you also support——

Senator MOYNIHAN. If the Senator would be kind enough to let me interrupt, that is the first time I have heard a representative of the AFL-CIO speak out for a speedup.

Mr. DENISON. Thank goodness our leadership is out of town.

Senator HEINZ. Would you also feel that the value of our Antidumping Act, or what would become our Antidumping Act, would be increased by a quicker implementation of measures such as a collection of estimated duties, for example, similar to the countervailing subsidies question I asked a moment ago?

Ms. JAGER. Yes; we have made recommendations on this point for provisional duties. In the statement, we have emphasized something that is in the law, but is not utilized, and that is that the Government should act on its own motion.

Our people do not know that there is a Japanese practice that subsidizes exports to the United States. Most industries do not know that the British, for example, were dumping something that the Treasury knew about, and therefore, although it is allowed in the law, evidently it is not practiced by the Government.

Senator HEINZ. That is an understatement.

Senator MOYNIHAN. Again, we are setting all sorts of precedents. That is the first time that I have ever heard a representative of the AFL-CIO accused of making an understatement.

Senator HEINZ. You have been right twice.

Senator MOYNIHAN. There are precedents rattling all over this room.

Senator HEINZ. Let us talk about procurement for a moment. The MTN package is supposed to contain some sort of international procurement code and, within that code, there are going to be requirements that the Congress enact some enabling legislation.

What do you think that the Congress can do, and ought to do, in order to insure that U.S. firms actually get Government contracts from other countries that we do not now get, that we open some of those closed doors that have been referred to by numerous people today and that foreign firms do not come in and run away with our Government procurement, which is all bid business and not subject, as we know, to the typical antidumping or countervailing duty or other law enforcement?

Senator MOYNIHAN. Senator Heinz, since the midway bell has rung, I wonder if you would be agreeable to having us recess for about 5 minutes. Ms. Jager and Mr. Denison never need time to think of a good reply, but you will have 5 minutes to think of an answer.

The committee will recess for 5 minutes.

[A brief recess was taken.]

Senator NELSON. I missed the last part. Had you completed your formal presentaion, Mr. Denison?

Mr. DENISON. Senator, I think that the last question was from Senator Heinz who was asking us about Government procurement. Do you want us to answer it?

Senator NELSON. Did you have a chance to complete your response?

Mr. DENISON. No, we did not.

Senator NELSON. Go ahead.

Mr. DENISON. Well, I think essentially what we wanted to say was that we fail to see where there is a clear economic benefit as a result of the Government procurement code because the United States is already the most open market in the world and it would be very difficult, we feel, for this particular area to be opened up.

We have not been able to get satisfactory answers to the questions we have raised in this particular area. What does one do? Does one establish an agent in every one of these countries to monitor their agencies and ministeries on every Government procurement? It has always been done on a very informal basis. That has been one of our complaints in the past.

There has been no posting, no bidding openly at least, so while there have been figures used that we would have a net benefit of $10 to $12 billion from a change in the Government procurement code, we frankly fail to see how that would come about, because we have not been shown the mechanics as to how this would take place.

Senator NELSON. By the trade negotiators, you mean?

Mr. DENISON. Yes.

Ms. JAGER. By enforcement agencies.

We are also concerned because Government procurement now is exempt under the GATT. This is one of the items that most people seem to be unaware. At this point, the GATT specifically exempts Government procurement.

Senator NELSON. I did not hear that.

Ms. JAGER. At this point, the general agreements on tariff and trade specifically exempt Government procurement so that the code would mark a major change in the international rules and a change that we really do not know enough about to be able to assess.

But we simply do not understand the mechanism by which the United States would end up with a net advantage. One of the issues, for example, is how to enforce the code if another government, say France, gets a contract and France has signed the code, there is no assurance that France will actually produce the product in France for this market. It may, in fact, produce the product in a country that does not sign the code.

So we just do not understand how the Government procurement code could work to the advantage of the United States, because we do not believe that, whatever happens, that there could ever be free competition in Government procurement.

Mr. DENISON. A question in our mind is how does one treat U.S. multinationals in their bidding on contracts abroad. Let us say their local plant receives the contract. Is that, then, considered a U.S. victory, a gain, a contract, U.S. production in that instance where the local U.S. multinational plant in France, for example, obtains the contract?

We just do not have the answer.

Senator RIBICOFF. Are there any other questions of Mr. Denison?

Senator MOYNIHAN. Mr. Chairman, Senator Heinz explained that, since he was requested by the Republican Members to stay on the floor, he would not be able to come back to get the answer to his question. He hopes that you will continue your testimony and appreciates very much your courtesy.

Senator DANFORTH. Not having stayed on the floor, I have been asked to put two questions to you from him.

Senator Heinz s first question is, "I am given to understand that the international government procurement code will specifically exempt purchases by State and local governments with or without Federal funds from its provisions. Presumably State buy America laws and Federal grants-in-aid, such as section 401, of the Surface Transportation Act would therefore not be affected by the code.

"What are your thoughts on this exemption? Is it real, or will the constitutional provisions of commerce over foreign affairs nullify this exemption?"

Mr. DENISON. I think our feeling would be that we would favor that particular exemption, but I think that we might be concerned about perhaps a later test in the courts of that provision. Do you want to elaborate on that?

Ms. JAGER. Yes.

Specifically in relation to section 401 of the Surface Transportation Act, the Federal Government has the authority under the act to waive the Buy American provisions of it, and, in fact, they have been waived.

The bill was passed last year and the Federal Highway Administration issued a regulation the day after it was passed waiving its obligations.

Now, this leads to considerable concern because we do support domestic preference and we do not understand how you are going to have an effective allocation of the revenues of the United States which are collected from the people who are in the States and localities if, in fact, these were promised elsewhere.

We are really concerned about preference. As most of the regulations are written under 401, it would appear that there is a preference for foreign bidders and I do not think that is the congressional intent. But we are pursuing this in the administrative agencies.

But it does give you a very good example of a serious problem where the Congress has acted, the Congress has decided that there should be domestic preference. If the code is signed, the code will specifically come out against any Buy American laws, and it is very hard for us to understand just precisely how this would work.

Senator DANFORTH. Thank you.

Senator RIBICOFF. Thank you very much.

The next witness is Mr. John Tolan.

Senator MATSUNAGA. Mr. Chairman, my primary duty here today is to introduce Mr. John Tolan who has traveled 5,000 miles to be with us today. But before introducing Mr. Tolan, I would like to make a brief comment.

We come before you today because it is our understanding that the American delegation in Geneva has been authorized to offer a tariff concession for foreign processed pineapples.

As you know, pineapple is one of the mainstays of the Hawaiian economy. The industry is vital to my State's economic well-being. The industry in Hawaii provides year-round employment for 2,400 workers and seasonal employment for an additional 8,000 workers during the summer months. The wages of pineapple workers have contributed $50 million annually to the Hawaiian economy. Purchase of equipment and materials in the local economy have added another $43 million annually. Last year the Hawaiian pineapple industry paid $7.2 million in Federal, State and county taxes.

As important as the pineapple industry is to Hawaii's economy, its future is tenuous for it must withstand ever-increasing foreign competition which has the decided advantage of cheap labor. Therefore, I am deeply concerned about the effect a tariff reduction may have on the Hawaiian pineapple industry and ask your assistance in forestalling any such proposal.

The Hawaii State Legislature has recently expressed the same concern in a concurrent resolution addressed to President Carter and Special Trade Representative Robert Strauss. I request that a copy of that concurrent resolution be included in the record.

Senator RIBICOFF. Without objection.

[The material referred to follows:]

STATE OF HAWAII HOUSE OF REPRESENTATIVES 10TH LEGISLATURE, 1979

HOUSE RESOLUTION NO. 298

Requesting the President of the United States and the Special Representative for Trade Negotiations to except fresh and processed pineapple products from tariff reduction in the current Multilateral Trade Negotiations

Whereas, the United States Special Representative for Trade Negotiations is considering the reduction of the United States import duty on processed pineapple from three per cent to one per cent; and

Whereas, the world supply of pineapple is again rapidly building up toward oversupply conditions, particularly in Thailand, and a substantial volume of this growing supply of processed pineapple is expected to be directed to the United States market; and

Whereas, a reduction in the United States import duty will provide further sales competitive advantage to this foreign pineapple in the American market; and

Whereas, the Hawaiian pineapple industry and Hawaii's delegation to the United States Congress have made these representations and facts known to Ambassador Robert S. Strauss and his staff; and

Whereas, agriculture is third in economic importance among commercial enterprises in Hawaii, and pineapple, next to sugar, is the most important crop; and

Whereas, the industry, partly as the result of assistance and understanding by this legislative body has made an economic recovery of encouraging proportions in the recent years since 1974, following a decade of its barely break-even or operating-loss years; and

Whereas, this legislative body recognizes the importance of the industry, both aesthetically and economically, to the State of Hawaii; and

Whereas, the public interest in the preservation and strengthening of the agricultural economy of this State as well as the economic welfare of the thousands of people directly sharing in the growing and canning of pineapple would be furthered by an action that would keep Hawaiian pineapple competitive; and

Whereas, international agreements dealing with non-tariff arrangements, which may be implemented only after congressional approval, have already been made under which assistance is to be given to American importers of Malaysian pineapple by the United States Food and Drug Administration which will result in the importation of Malaysian pineapple of substandard quality; now, therefore,

Be it *Resolved* by the House of Representatives of the Tenth Legislature of the State of Hawaii, Regular Session of 1979, that the President of the United States and the Special Representative for Trade Negotiations be, and they are, hereby requested to except fresh and processed pineapple products from tariff reduction in the current Multilateral Trade Negotiations; and

Be it further *Resolved*, That Hawaii's delegation to the United States Congress are urged to continue to oppose any reduction in the United States import duty on fresh and processed pineapple products; and

Be it further *Resolved*, That duly certified copies of this Resolution be transmitted to the President of the United States; Ambassador Robert S. Strauss, the Special Representative for Trade Negotiations, and to each member of Hawaii's congressional delegation.

OFFERED ON FEBRUARY 8, 1979
(By 25 signed names).

STATE OF HAWAII SENATE 10TH LEGISLATURE, 1979

SENATE RESOLUTION NO. 76

Requesting the President of the United States and the Special Representative for Trade Negotiations to except fresh and processed pineapple products from tariff reduction in the current Multilateral Trade Negotiations

Whereas, the United States Special Representative for Trade Negotiations is considering the reduction of the United States import duty on processed pineapple from three per cent to one per cent; and

Whereas, the world supply of pineapple is again rapidly building up toward oversupply conditions, particularly in Thailand, and a substantial volume of this growing supply of processed pineapple is expected to be directed to the United States market; and

Whereas, a reduction in the United States import duty will provide further sales competitive advantage to this foreign pineapple in the American market; and

Whereas, the Hawaiian pineapple industry and Hawaii's delegation to the United States Congress have made these representations and facts known to Ambassador Robert S. Strauss and his staff; and

Whereas, agriculture is third in economic importance among commercial enterprises in Hawaii, and pineapple, next to sugar, is the most important crop; and

Whereas, the industry, partly as the result of assistance and understanding by this legislative body has made an economic recovery of encouraging proportions in the recent years since 1974, following a decade of its barely break-even or operating-loss years; and

Whereas, this legislative body recognizes the importance of the industry, both aesthetically and economically, to the State of Hawaii; and

Whereas, the public interest in the preservation and strengthening of the agricultural economy of this State as well as the economic welfare of the thousands of people directly sharing in the growing and canning of pineapple would be furthered by an action that would keep Hawaiian pineapple competitive; and

Whereas, international agreements dealing with non-tariff arrangements, which may be implemented only after congressional approval, have already been made under which assistance is to be given to American importers of Malaysian pineapple of substandard quality; now, therefore,

Be it *Resolved* by the Senate of the Tenth Legislature of the State of Hawaii, Regular Session of 1979, that the President of the United States and the Special Representative for Trade Negotiations be, and they are, hereby requested to except fresh and processed pineapple products from tariff reduction in the current Multilateral Trade Negotiations;

Be it further *Resolved*, That Hawaii's delegation to the United States Congress are urged to continue to oppose any reduction in the United States import duty on fresh and processed pineapple products; and

Be it further *Resolved*, That duly certified copies of this Resolution be transmitted to the President of the United States; Ambassador Robert S. Strauss, the Special Representative for Trade Negotiations, and to each member of Hawaii's congressional delegation.

OFFERED ON JANUARY 31, 1979
(By 17 signed names).

STATE OF HAWAII SENATE 10TH LEGISLATURE, 1979

SENATE CONCURRENT RESOLUTION NO. 8

Requesting the President of the United States and the Special Representative for Trade Negotiations to except fresh and processed pineapple products from tariff reduction in the current Multilateral Trade Negotiations

Whereas, the United States Special Representative for Trade Negotiations is considering the reduction of the United States import duty on processed pineapple from three per cent to one per cent; and

Whereas, the world supply of pineapple is again rapidly building up toward oversupply conditions, particularly in Thailand, and a substantial volume of this growing supply of processed pineapple is expected to be directed to the United States market; and

Whereas, a reduction in the United States import duty will provide further sales competitive advantage to this foreign pineapple in the American market; and

Whereas, the Hawaiian pineapple industry and Hawaii's delegation to the United States Congress have made these representations and facts known to Ambassador Robert S. Strauss and his staff; and

Whereas, agriculture is third in economic importance among commercial enterprises in Hawaii, and pineapple, next to sugar, is the most important crop; and

Whereas, the industry, partly as the result of assistance and understanding by the Hawaii State Legislature has made an economic recovery of encouraging proportions in the recent years since 1974, following a decade of its barely break-even or operating-loss years; and

Whereas, the Hawaii State Legislature recognizes the importance of the industry, both aesthetically and economically, to the State of Hawaii; and

Whereas, the public interest in the preservation and strengthening of the agricultural economy of this State as well as the economic welfare of the thousands of people directly sharing in the growing and canning of pineapple would be furthered by an action that would keep Hawaiian pineapple competitive; and

Whereas, international agreements dealing with non-tariff arrangements, which may be implemented only after congressional approval, have already been made under which assistance is to be given to American importers of Malaysian pineapple by the United States Food and Drug Administration which will result in the importation of Malaysian pineapple of substandard quality; now, therefore,

Be it *Resolved* by the Senate of the Tenth Legislature of the State of Hawaii, Regular Session of 1979, the House of Representatives concurring, that the President of the United States and the Special Representative for Trade Negotiations be, and they are, hereby requested to except fresh and processed pineapple products from tariff reduction in the current Multilateral Trade Negotiations; and

Be it further *Resolved*, That Hawaii's delegation to the United States Congress are urged to continue to oppose any reduction in the United States import duty on fresh and processed pineapple products; and

Be it further *Resolved*, That duly certified copies of this Concurrent Resolution be transmitted to the President of the United States; Ambassador Robert S. Strauss, the Special Representative for Trade Negotiations, and to each member of Hawaii's congressional delegation.

OFFERED ON JANUARY 31, 1979
(By 16 signed names).

Senator RIBICOFF. You may proceed.

Senator MATSUNAGA. Again, Mr. Chairman, I appreciate the subcommittee's gracious accommodation in hearing us today and I am pleased at this time to introduce Mr. John Tolan, executive vice president of the Hawaii Pineapple Growers' Association who is best able to brief this committee on the specific details of the problem.

STATEMENT OF JOHN TOLAN, EXECUTIVE VICE PRESIDENT, HAWAII PINEAPPLE GROWERS ASSOCIATION

Mr. TOLAN. Mr. Chairman and members of the subcommittee, the U.S. import duty on canned pineapple is at a specific rate of three-quarters of a cent a point. This rate has been in effect since 1948. However, the ad valorem equivalent has lessened over the years.

In 1977, the rate was 3.4 percent; in 1972, 6 percent; and in 1967, 7 percent. So, within these last 10 years, the duty already has been reduced from 7 percent to 3 percent and any further reduction would be discriminatory as well as detrimental to Hawaii's pineapple industry.

Any reduction in the duty must be recognized as a reduction in cost for the foreign producer of pineapple whose overall costs are considerably lower than Hawaiian production, principally cost of labor.

Every item of cost is important. A reduction in duty would result in a further cost disadvantage for Hawaii production. The conditions under which the pineapple industry operates in Hawaii are on the basis of wages and salaries paid at U.S. standards to employees who enjoy a U.S. standard of living and that of paying U.S. Federal, State, and local taxes, none of which can be compared with these kinds of costs in foreign pineapple producing countries.

For example, in Thailand, a day's wage in pineapple averages slightly above a minimum of $1.40, whereas on the other hand, the U.S. import duty which is equal to 34 cents on each case of Thailand pineapple, is a cost of real significance.

The reason for referring to Thailand in particular is because the Thai pineapple industry is reported to be launching a bid to become the world's leading pineapple exporter. Exports of 88,000 metric tons in 1977 are expected to increase to 180,000, equivalent to 8.8 million cases by the early 1980's. The United States accounts for the largest share of Thai exports, 44.9 percent in 1977.

The source of this information is the Far Eastern Economic Review.

That is briefly our case, as summarized.

Senator RIBICOFF. Thank you very much. Your entire statement will go in the record as if read.

Senator RIBICOFF. Thank you, Senator Matsunaga.

Senator MATSUNAGA. Thank you very much.

Senator RIBICOFF. Any questions, gentlemen?

Senator NELSON. What is the total production of pineapple in Hawaii? How much is shipped to the other 49 States?

Mr. TOLAN. The production in Hawaii is about 8.8 million cases and it practically all is shipped into the U.S. mainland.

Senator NELSON. What are the comparable figures? You were talking about 88,000 tons in Thailand?

Mr. TOLAN. Yes.

Senator NELSON. How many tons?

Mr. TOLAN. That is the process equivalent tons. We produce 660,000 tons in Hawaii. When you process it into the canned pineapple and pineapple juice, we are today where Thailand is going to be tomorrow.

Senator NELSON. What I am trying to get at, how does the total production of Hawaii compare to the total production of Thailand? How does the total consumption in the United States of Hawaiian pineapple compare to the total consumption today of Thailand pineapples?

Mr. TOLAN. Our production is probably three times Thailand production today. As I said, in a couple of years, it will be the same. About 90 percent of our production in Hawaii is consumed in the United States market and 10 percent is exported to foreign countries, mainly to the European Economic Community and to Canada.

Senator RIBICOFF. Thank you very uch.

[The prepared statement of Mr. Tolan follows:]

STATEMENT OF JOHN J. TOLAN, EXECUTIVE VICE PRESIDENT, PINEAPPLE GROWERS ASSOCIATION OF HAWAII

Mr. Chairman, members of the Subcommitee, my name is John J. Tolan. I am Executive President of the Pineapple Growers Association of Hawaii and present this testimony on behalf of all producers and canners of pineapple and pineapple juice in the State of Hawaii.

The following statement is specific to this subject of tariff reduction. Please see the attached Exhibit A (pages 1–5) for general details on Hawaii's pineapple industry. Hawaii's pineapple industry is strongly opposed to reduction in the U.S. import duties on pineapple products.

We learned of a report recently that the U.S. Trade Mission in Geneva had received approval to offer tariff reduction on processed pineapple, from the present 3% A.V.E., in the present Multilateral Trade Negotiations.

Ambassador Robert S. Strauss, the President's Special Representative for Trade Negotiations confirmed that within the coming weeks final decisions on tariff concessions on a number of product issues, including processed pineapple, will be made.

The U.S. duty is at a "specific" rate of 0.75¢ per pound. This rate has been in effect since 1948 (the MFN rate in 1931 was 2¢ per pound); however, the ad valorem equivalent (AVE) has lessened over the years. The AVE in 1977 was 3.4%; in 1972, 6%; and, in 1967, 7%. In absolute terms, of course, the dollars collected are the same for the quantities imported. In 1977, the total duty paid on 393.4 million pounds at 0.75¢ per pound was approximately $3.0 million.

Any reduction in the duty must be recognized as a reduction in cost for the foreign producers of pineapple, whose overall costs are considerably lower than Hawaiian production, principally cost of labor. Every item of cost is important. A reduction in duty would result in a further cost disadvantage for Hawaii production.

The conditions, under which the pineapple industry operates in Hawaii, are on the bases of wages and salaries paid, at U.S. standards, to employees who enjoy a U.S. standard of living, and that of paying U.S. federal, state, and local taxes, none of which can be compared with these kinds of costs in foreign pineapple producing countries. For example, in Thailand, a day's wage in pineapple averages slightly above the minimum of $1.40, whereas, on the other hand, the U.S. import duty, which is equal to 34¢ on each case of Thailand pipeapple, is a cost of real significance.

The reason for referring to Thailand, in particular, is because the Thai pineapple industry is reported to be launching a bid to become the world's leading pineapple exporter. Exports of 88,092 metric tons in 1977 are expected to increase to 180,000 (equiv. to 8.8. million cases) by the early 1980's. The U.S. accounts for the largest share of Thai exports, 49% in 1977. (Far Eastern Economic Review, 11-10-78).

From this same source, the Thai Ministry of Commerce reported the cost of producing a case of canned pineapple in 1977 was U.S. $6.50; at this level, the industry just managed to break even.

We repeat—any reduction in the tariff will encourage continued expansion of foreign pineapple, either by reducing the cost of Thai pineapple in the U.S. market, or, to the extent the duty reduction is reflected in price, making Hawaii less competitive, and thereby forcing reduction in Hawaii's price for its pineapple. The detrimental effect this would have on our industry would be on U.S. labor as well.

In the past five years, the Hawaiian pineapple industry has become economically viable again, following a decade of loss or barely breakeven years for the companies that survived; a number did not.

One measure of the profitability of the pineapple companies in Hawaii today, publicly available, is from the reports of Maui Land & Pineapple Company. Their pineapple operations, which are solely in Hawaii, have been profitable since their barely break-even year in 1972. While it is not known whether Maui's pineapple operations are typical of all the pineapple companies in Hawaii, it is the only one that reports pineapple operations separately. Attached, as Exhibit B, is a history of these operating results covering the past twenty-two years. Optimistically, we expect that the results of these recent years will be more typical for the future. We refer you to this history of operating results to give some perspective to the significance of the U.S. import duty to Hawaii's production, by the following example. (Maui Pineapple Company represents approximately one-third of the production of canned pineapple produced in Hawaii.)

Example: To show the relative significance of the U.S. import duty to Hawaii's production (on the supposition that we were to be subject to the duty):

Industry pack of processed pineapple—Total for the latest pack year in standard, 45-pound cases	8,359,844
U.S. import duty @ ¾¢ per pound	$2,821,448

This truly would be a significant cost burden if it were to be imposed on our industry. Conversely, a reduction in the U.S. import duty of ¾¢ per pound would represent a cost reduction or saving of $2,950,455 on foreign produced pineapple entering the United States (Exhibit A—page 4).

We greatly appreciate this opportunity to express our concern for the possibility of a reduction in the U.S. import duty on processed pineapple.

Pineapple Growers Association of Hawaii

THE PINEAPPLE INDUSTRY IN HAWAII

Island locations and company operations

Hawaii's pineapple industry is located on four islands: Lanai, Maui, Molokai and Oahu, and is comprised of three companies that farm and process their own fruit. In addition, the production of nine independent growers is processed by one of the companies on Maui.

These companies are Castle & Cooke Foods (Dole) which has two plantations—on Oahu and Lanai—and a cannery in Honolulu; Del Monte Corporation with two plantations—on Molokai and Oahu—and its cannery is in Honolulu; the Dole can-making factory makes the cans for these two Honolulu canneries. Maui Pineapple Company, Ltd. has two plantations and a cannery and can-making factory on the Island of Maui.

Economic importance to State

Agriculture is third in economic importance among commercial enterprises in Hawaii, and pineapple, next to sugar, is the most important crop.

Acreage-production-value

Pineapple is farmed commercially on 43,000 acres. The first successful pack of canned pineapple was produced in 1903. Annual pineapple production is about 695,000 tons. Of this tonnage, 83,000 is sold in the fresh market; the greater proportion, however, is processed as canned pineapple and juice. Processing in the latest 1977–78 year totaled 12.5 million cases of pineapple, 8.4 million of juice and nearly 295,000 cases of concentrated pineapple juice. This production was valued at $160 million.

Production for the 1977–78 year represents the third year in a row that the pack increased, from a low of 11.6 million cases of pineapple and 5.6 million cases of juice in 1974–75.

Fresh pineapple

A word about fresh pipeapple—although the tonnage is only about 12% of the total pineapple grown in Hawaii, the volume is significant because it is growing. However, the processed pineapple continues to represent the major products of the industry.

Employment-payroll-purchases-taxes

Besides enhancing the beauty of the islands with tens of thousands of cultivated green acres, their contributions to Hawaii's economic base are substantial. Year-round employment is provided to 4,200 workers on plantations and in canneries, increasing to over 12,000 at the peak of the season. Wages paid to pineapple workers totaled $50 million during the past year. In addition to pineapple's contributions to the economy in employment and payroll, the industry provides indirect employment in related industries, such as suppliers of equipment and materials. Local purchases annually amount to $43 million. $7.2 million was paid last year in Federal, State and County taxes (Federal corporate income taxes not included).

Processed pineapple products

Products, or styles of cut, derived from the fruit in processing are:

Slices.—Slices consist of whole circular slices cut across the axis of the peeled, cored fruit cylinders.

Chunks.—Chunks consist of short, thick pieces cut from thick slices or from peeled, cored fruit.

Crushed.—Crushed consists of shredded or finely cut pieces of fruit flesh.

Juice.—Juice is derived from the free juice drained away from the fruit as it is cut, and the liquid extracted from the various parts of the fruit which remain after the foregoing styles have been removed.

Tidbits.—Tidbits also are made but mostly for the food service market. "Tidbits" consist of sectors cut from slices.

These end products of the pineapple represent full utilization of the edible portions of the fruit. In their respective forms, all are important and, as stated above, by the composition and nature of the fruit, full utilization is attained.

U.S. PROCESSED PINEAPPLE PRODUCTION, IMPORTS, PER CAPITA CONSUMPTION—CANNED PINEAPPLE, 1977

	Total pounds (thousands)	Percent of per capita consumption
U.S. (Hawaii) pack (year ended May 31, 1978)	376,193	
Less U.S. (Hawaii) exports	34,410	
Net to U.S. consumption	341,783	46.4
Receipts from Puerto Rico to United States	1,931	.2
U.S. imports (see next table of imports)	393,394	53.4
Total U.S. consumption	737,108	100.0
U.S. per capita consumption	3.4	

U.S. IMPORTS—PROCESSED PINEAPPLE, 1977

[Quantities and values in thousands, except import duty]

Country of origin	In thousands of pounds: In airtight containers	Not in airtight containers	Total processed	Value (thousands of U.S. dollars)
Indonesia	1,790		1,790	390
Ivory Coast	3,855		3,855	922
Japan	294		294	82
Malaysia	13,112		13,112	3,253
Singapore	8,844		8,844	2,152
Mexico	30,599	3,782	34,381	8,157
Philippines	218,833		218,833	46,408
South Africa	6,079	103	6,182	1,431
Taiwan	17,441	1,682	19,123	4,868
Thailand	86,284		86,284	18,971
Others (less than 200)	524	271	696	161
Total	387,655	5,739	393,394	86,795

Note: U.S. import duty—Collectible on the above imports at the approximate ad valorem rate equivalent of 3.4 percent is $2,950,455.
Source: U.S. Department of Commerce.

PINEAPPLE—AN EXPORT COMMODITY FOR HAWAII

Pineapple brings in money to the State from sales in the U.S. mainland market and to foreign (51 countries in 1977) markets as well. A backhaul cargo for the State, the contribution made by pineapple to ocean transportation is significant and also worthy to note.

Ocean transportation is a cost of major proportions which must be borne by the economy of this insular state. The Pacific Coast/Hawaii ocean service, predicated as it is on tonnage requirements *to Hawaii*, benefits from revenue derived from backhaul shipments, such as pineappple cargo to the mainland. Of the eastbound containers returned to the mainland, more are empty than full; however, approximately 60% of the containers returning with cargo are carrying Hawaiian pineapple.

U.S. MARKET—COMPETITION FOR HAWAIIAN PINEAPPLE

Hawaii's pineapple products compete with all food products on the grocery store shelves, however, direct competition for pineapple is from domestic canned fruits and canned pineapple imports; canned pineapple is by far the major fruit of any volume among the processed fruit imported by the U.S.

Pineapple is produced and imported from the Philippines by two Hawaii-based pineapple companies. Their Philippine pineapple does not compete with their respective Hawaii production however, inasmuch as their pineapple from both sources is marketed under the same label and priced the same in the U.S. market.

Consumption of canned fruit-major items-showing quantity imported and duty

Shown below for the 1977 calendar year are: Per Capita Consumption; U.S. Imports of the Major Canned Fruit Items; and, the respective U.S. Import Duty Rates that apply:

TSUSA No.[1]	Major canned fruit items	U.S. consumption: Per capita[2] (pounds)	Total (thousand pounds)	U.S. imports[3] (thousand pounds)	U.S. import duty[1] ad valorem
146.14	Apples and apple sauce	2.4	515,200	10,475	2.8 percent A.V.E.[4]
150.00	Fruit salad and cocktail	2.8	601,100	15,192	17.5 percent.
148.78	Peaches (includes spiced)	5.1	1,094,900	112	20 percent.
148.86	Pears	2.2			18 percent.
148.98	Pineapple	3.4	737,100	393,394	3 percent A.V.E.
	All other canned fruits, various	3.9			
	Total U.S. canned fruit consumption	19.8			

[1] TSUSA—Tariff Schedules of the United States.
[2] Source: USDA, "Fruit Situation" July 1978.
[3] U.S. imports, included in total consumption. Source: USDC, Bureau of Census.
[4] A.V.E.—Ad valorem equivalent.
Prepared by: John J. Tolan, executive vice president, Pineapple Growers Association of Hawaii.

MAUI LAND & PINEAPPLE CO.—PROFITS AND LOSSES AS PERCENT OF SALES OF PINEAPPLE PRODUCTS, 1957-77

Years ending—	Sales revenue	Profit or (loss)	Percent of sales,
May 31:			
1957	$15,265	$699	4.58
1958	15,808	426	2.69
1959	16,371	868	5.30
1960	16,638	503	3.02
1961	16,153	262	1.62
1962	15,969	(317)	(1.99)
Feb. 28:			
1963	10,192	(880)	(8.63)
1964	15,301	413	2.70
1965	17,968	831	4.62
1966	19,833	930	4.69
Dec. 31:			
1966	16,711	48	.29
1967	18,086	(303)	(1.68)
1968	17,224	(179)	(1.04)
1969	20,324	(134)	(.66)
1970	24,556	113	.46
1971	22,983	304	1.32
1972	23,967	(50)	(.21)
1973	27,901	1,145	4.10
1974	35,452	3,213	9.06
1975	38,916	4,550	11.69
1976	43,024	4,770	11.08
1977	47,419	5,551	11.70

Senator RIBICOFF. Mr. John Babson.

STATEMENT OF JOHN BABSON, CHAIRMAN OF THE EXECUTIVE COMMITTEE OF THE SPECIAL COMMITTEE ON U.S. EXPORTS

Mr. BABSON. Mr. Chairman and members of the subcommittee, my name is John Babson and I am a vice president of Ingersoll-Rand Co. I am appearing today as chairman of the executive committee of the Special Committee for U.S. Exports. Appearing with me is James K. Jackson.

The special committee is a participating group of more than 1,200 business concerns and 80 supporting business associations whose operations and concerns are directed to the export of U.S. products. The Special Committee's major concerns are with the effect of the U.S. tax system on exports by U.S. businesses and the ability of those businesses to compete in foreign trade in view of the many tax advantages and incentives and direct and indirect subsidies provided to foreign competitors by their governments.

The special committee is encouraged by the efforts of the Office of the Special Trade Representative and Ambassador Strauss to improve the world atmosphere for international trade. While many of the committee's members are concerned with various issues raised by the multilateral trade negotiations, the special committee's primary concern is with the taxation of international trade.

Accordingly, this testimony is limited to a discussion of the treatment of tax subsidies under the "Subsidies-Countervailing Duties Code" presently under negotiation. In this connection, we understand that one aspect of the Multilateral Trade Negotiations which was not specifically addressed in President Carter's memorandum of notification to Congress on January 4, 1979, and the committee's release announcing this hearing is the development of an illustrative list of tax subsidies for purpose of the "Subsidy-Countervailing Duties Code."

The "Subsidies-Countervailing Duties Code" clearly specifies that export subsidies may be countervailed against under the General Agreement on Tariff and Trade. The illustrative list of subsidies includes various tax practices. The effects of these provisions will require careful considerations on the part of U.S. exporters and the Congress.

While it is premature to address the specifics which may be included in the code presently under negotiation, it is not premature to raise questions and concerns at this time. In general, tax subsidies are traditionally broken down between direct and indirct taxes. The final code may specifically provide that indirect tax rebates such as under the value added tax are permissible, but rebate of direct taxes including the deferral of direct taxes are not.

The rebate of value added tax is a major export benefit to our foreign trading partners. At this time, and for the near future, the United States has no value added tax. Accordingly, U.S. exporters do not benefit from a value added tax rebate that is permissible to our foreign competitors. Thus, only our foreign competitors will continue to benefit from this portion of a subsidy code.

A list expanding the present concept that the rebate of direct taxes is in violation of GATT to include deferral of such taxes would appear to certainly adversely affect the only significant U.S. tax incentive program for exports. Specifically, the DISC program which allows the deferral of a portion of U.S. taxes on export sales subject to a number of conditions and requires the repayment of the deferred tax if the company does not continue to meet the requirements of the Internal Revenue Code. Thus, any change in GATT making DISC a subsidy which may be countervailed against would be detrimental to U.S. exports and could adversely affect our balance of trade.

It has been argued that DISC has already been found to be in violation of the present GATT agreements pursuant to GATT documents L4422. However, that document and the companion documents L4423 through L4425 holding certain tax practices of France, Belgium, and the Netherlands in violation of GATT, did not hold that deferral of taxes per se is in violation of GATT. The GATT documents are rather a limited determination that certain limited aspects of the DISC program are contrary to GATT. Actually, the lack of an interest charge on deferred taxes under DISC was singled out as a violation.

The special committee understands that the new code cannot specifically repeal DISC—only Congress can take that action. However, if the definition of a "subsidy" includes DISC, and permits our trading partners to countervail against it, it will be rendered a nullity even without repeal of DISC by Congress. Inclusion of a specific terminology changing the prior GATT language to confirm and broaden the prior determination on DISC could result in actions by other nations against U.S. exports and limit U.S. attempts to reduce preferential export tax practices of other nations.

The special committee is particularly concerned that all the practices of our foreign competitors be carefully scrutinized along with U.S. practices. If we are to accept any direct or implied limitation on DISC, we should insure that other nations are eliminating the various export tax incentives in their systems. Further, it would be unfortunate if the new code were to restrict Congress ability to enact new legislation promoting U.S. exports, such as the export promotion program announced by the President last year. In addition, it would be unfortunate to restrict Congress' consideration of other export tax incentives such as providing an incentive for increased U.S. research and development and productivity.

In summary, the appearance of the special committee today is to point out that the inclusion of taxes in a "Subsidies-Countervailing Duties Code" raises a number of issues which must be carefully considered by the effected parts of U.S. industry and the Congress. While we are unable to be more specific on this topic at this time, we will be pleased to comment when the actual codes are presented to Congress.

Senator RIBICOFF. Thank you.

Senator Danforth?

Senator DANFORTH. I am told that your organization has given a lot of thought to encouraging exports. What areas have you considered as far as governmental action is concerned? What do you think would be the most fruitful courses for us to pursue?

Mr. BABSON. Well, I missed part of your question. We have considered—are you talking about incentives?

Senator DANFORTH. How to increase America's ability to sell abroad, what sort of activities, policies, Congress should pursue in order to increase our export capability.

For example, Senator Long has suggested that we enact a value-added tax. Others have suggested tax credits for R. & D., amendments to the Webb-Pomerine Act. Increasing the authorization level for the Export-Import Bank. These are all things that have been talked about, and I am sure some legislation will be offered on some or all.

I am wondering if your organization had addressed this question. I am sure you had.

Mr. BABSON. Yes; we have. This particular organization has been fundamentally interested in the tax aspect of the incentives and to try to at least equalize our position with the incentives and tax benefits of other countries. On the other hand, there are other groups, which I represent, that are very active in the broader list of suggestions of the type you have mentioned, which do nothing more, than let us compete on an even and fair basis with our competitors.

To go back to the tax aspect, we are working with groups on the Hill and Senators and Congressmen trying to put together—and we are prepared to do this—tax incentives which will, in fact, benefit exporters and do what other countries are doing, or at least allow us to compete within the GATT rules.

This is one of our concerns here today that if this "subsidies-countervailing duties code" as it seems to be coming out, limits tax "deferral" or includes tax "deferral" as an export subsidy will, to a large degree, hamstring our efforts and results of what we are trying to do by working with the administration and with the Congress.

Senator DANFORTH. If you have any specific suggestions other than the DISC and deferral, I would really appreciate hearing from you.

Mr. BABSON. You will, and I will be glad to do that. We have some specific suggestions that deal with increasing this R. & D. and productivity in this country. We would be very glad to work with you.

Senator DANFORTH. Are those the main lines that you would pursue, R. & D. and productivity?

Mr. BABSON. Those are two areas that work both in favor of this country by creating a better economy here and in addition, help us to compete in foreign markets against other exporters, and at the same time compete with importers in the United States, if you will.

Senator DANFORTH. Do you think we should enact a value-added tax?

Mr. BABSON. I think it is going to be a highly discussed subject and, from the exporter's point of view, we can see a lot of merit to it if we treat it the same way as the Europeans do. The danger I suppose is, as you are more aware of than I, that if it (VAT) is merely another tax piled on other taxes, it will not be desirable, but it (VAT) is an interesting tax approach and will receive a lot of attention and discussion, I am sure. We are very interested in and are studying that subject (VAT).

Senator DANFORTH. If you were to vote on it today, how would you vote?

Mr. BABSON. I would have to see the details. If it is a "pile on" tax, I am sure that it is not an acceptable answer. I think we would have to look at it in detail.

Senator DANFORTH. That is a very good answer, which I use frequently myself.

Mr. BABSON. Perhaps I learned it from you.

Senator RIBICOFF. Senator Roth?

Senator ROTH. In the interests of saving time, I do have a couple of questions I would like to submit to you if you would answer them for purposes of the record.

Mr. BABSON. Yes, sir.

Senator ROTH. Thank you.

[The material to be furnished follows:]

REMARKS AND QUESTIONS OF SENATOR ROTH TO JOHN R. BABSON

INTRODUCTORY COMMENT

Senator ROTH. It seems that one of the areas avoided by the MTN Agreements was the use of broader tax adjustments as a nontariff trade barrier. In fact, the issue of taxes and their effect on trade was generally avoided except for a restriction on the use of tax measures as a subsidy—the tax practices mentioned being very similar to practices used here in the U.S.

Question 1. Do you think it would be useful in the implementing legislation to call for an international conference to negotiate an agreement or agreements that would place U.S. companies engaged in international trade on an equivalent tax footing with their foreign-owned competitors?

Question 2. In lieu of an international agreement, do you have any suggestions how the U.S. unilaterally could place U.S. companies engaged in international trade on an equivalent tax footing with their foreign-owned competitors?

RESPONSES FROM JOHN R. BABSON

Response to question 1. I do indeed feel that it would be useful for the MTN implementing legislation to call for an international conference to negotiate international tax agreements to put U.S. companies on equivalent tax basis with their foreign competitors.

Such a forum would at a minimum thoroughly illuminate the fundamental differences in the various taxation philosophies and practices of the participants—i.e., the territoriality approach of EEC countries wherein all corporations are taxed on the basis of geographical area of operations, as compared to the U.S. practice of taxing U.S. based corporations on earning regardless of area of operations. Also, the fundamentally different taxation principles of the U.S. and trading competitors with respect to "direct" and "indirect" taxation approaches would be considered in depth. Hopefully, substantial resolution could be effected through such an international tax conference.

For such a conference to be productive, from the standpoint of placing U.S. companies on an equivalent footing with foreign competitors, the U.S. must take an aggressive posture and fully develop and deal with all the various tax practices of other nations.

Of primary and immediate concern is the notion that the illustrative subsidies list being developed under GATT (Annex A to the Subsidies and Countervailing Duties Code) could be a limiting factor on full discussion. The exception of border rebates on the value added tax from the list of export subsidies, without equivalent concession to U.S. tax practices would indeed not be conducive to a guide for pro results of an international conference of the type invisioned.

As has been stated in the testimony of others at this hearing with respect to countervailing duties and anti-dumping, the U.S. has been lax in its posture towards the practices of other nations. In the tax area, for example, the DISC legislation was enacted in 1971. As the hearings at that time indicate, a major factor in that legislation was the tax practices of other nations which had been in existence for many years without U.S. action. As soon as DISC was enacted in 1971, complaints were lodged under GATT against the DISC program. At that point, we finally took action by, in effect, counterclaiming that the tax practices of France, Belgium, and The Netherlands were also in violation of GATT. The particular practices in these countries are not a complete list of such practices but rather more easily illustrated cases which could be utilized to demonstrate that any subsidy under the DISC was minor compared to those of other nations. GATT Documents L-4423 through L-4425 did find that the particular practices violated GATT.

The reason for stating this history is to indicate that the U.S. should fully develop and expose foreign tax practices for purposes of an international conference. It would not be useful to have a conference where the U.S. was again found on the defensive with respect to DISC and merely constituting a rehash of the procedures leading to the various GATT Documents.

Response to question 2. Regardless of the outcome of an international tax conference of the type invisioned above, unilateral tax actions by the U.S. are perceived as a definite requirement if U.S. companies are to compete on an equal footing in international trade. Unfortunately, with the exception of DISC legislation, unilateral tax actions by the U.S. have worked to make it more difficult for U.S. businesses in the world markets. The enactment of Subpart F, the promulgation of rules for the enforcement of Section 482 (arms length pricing) and rules determining allocation of income under Section 861 are typical examples.

Specific unilateral actions that could now be taken by the U.S. to improve our competitiveness include:

(*a*) Improve the effectiveness of the DISC programs by making technical modifications expand the small business benefits and simplify and reduce the cost to set up and operate.

(*b*) Remove unnecessary restrictions under Subpart F and tailor the rules to provide export incentives while continuing to eliminate the abuses Subpart F was designed to prevent.

(*c*) Simplify the regulations to provide clarity and consistency under Sections 482 and 861.

In addition to the above listed actions related to the Code in its present form, other positive measures that the U.S. could unilaterally take to improve our foreign trade position include: [1]

(*a*) Enact legislation to make our capital recovery allowances more comparable to those provide by other nations.

(*b*) Enact specific tax legislation (in addition to (a) above) specifically designed to dramatically improve U.S. productivity rates and investment in Research and Development.

Another area which could have major export benefits is the value added tax. However, any proposal in this area should be carefully considered from both domestic and international aspects and is regarded as a positive unilateral action on a longer term than those listed above.

---

[1] All the studies in this area of capital recovery indicate the U.S. is lagging behind other major industrial countries and the gap is widening due to the impact of inflation. Action in this area would benefit all U.S. industry as well as exporters and would make U.S. industry as a whole, competitive, provide incentives to encourage research and development. These types of actions would, of course, increase capital formation in this nation, lead to greater productivity. Obviously, there are many domestic as well as international trade benefits which would be derived.

Senator RIBICOFF. I think there is a vote going on and Senator Moynihan has gone over to vote. He should be back in a minute or so, and he will resume the hearings.

The next series of witnesses will be Mr. John Rehm and Mr. Robert McElwaine. The committee will recess upon the return of Senator Moynihan.

[A brief recess was taken.]

Senator MOYNIHAN. Now, then, we will resume our steady progress through the witnesses. It is my pleasure to welcome Mr. John Rehm, testifying on behalf of the American Automobile Importers of America; Mr. Robert McElwaine, president of the American Automobile Dealers Association, accompanied by Mr. Fred LeFevers, chairman, American Automobile Dealers Association; and Mr. Bart Fisher, counsel, Patton, Boggs & Blow.

Mr. MCELWAINE. I apologize for the absence of my colleagues, Mr. Chairman. Mr. LaFevers is fogbound in North Carolina, and Mr. Fisher is still snowbound in Great Falls.

Senator RIBICOFF. I think half of the U.S. Senate could not get here this morning because they live in Bethesda.

Mr. MILLET. I am here. I am missing from the witness list. I am chairman of the American Automobile Importers. Mr. Rehm is our special counsel. My name is Ralph Millet, chairman of the board of the Automobile Importers of America, and before Mr. Rehm comments, I would like to make a few comments about our association.

Senator RIBICOFF. If you will proceed.

STATEMENT OF RALPH T. MILLET, CHAIRMAN OF THE BOARD, AUTOMOBILE IMPORTERS OF AMERICA, INC., ACCOMPANIED BY JOHN B. REHM, ESQ., BUSBY, REHM & LEONARD, SPECIAL COUNSEL, AIA, INC.

Mr. MILLET. The Automobile Importers of America, AIA, consists of 17 automobile importers, including representatives of all major manufacturers of imported cars, except Volkswagen and Mercedes-Benz. The members of AIA account for over $5 billion of imported automotive products each year, and their stake in the results of the multilateral trade negotiations, the MTN, is therefore substantial.

With your permission, sir, I would like to summarize the statement and have the full statement included in the record.

Senator MOYNIHAN. Yes.

Mr. MILLET. Beyond these dollar amounts involved, however, we appear here today because: First, we applaud this country's liberal trade policy, which has fostered healthy and vigorous competition in the U.S. automobile industry—comprising both domestic and imported cars. As a result, consumers in this country have shared such benefits as greater choice, product innovation, lower prices, and energy savings.

Second, we believe that the multilateral trade negotiations represent a major step forward in establishing "rules of the game" for international trade. In particular, the MTN should promote the objective of having all major automobile-producing countries import as freely as they export.

Third, we believe that the MTN will provide the foundation of world trade for the next generation. Imports of automobiles have gradually increased over the last 30 years to about 17 percent of the

U.S. market. They have done so without disrupting the domestic industry, which is currently making record profits. We hope to continue to benefit the American consumer for at least the next 30 years.

It is our understanding that the administration will propose a single omnibus bill to the Congress to implement the package of codes now emerging from the MTN. It seems quite clear that this bill will establish the statutory framework for U.S. foreign trade policy for years to come. It is therefore particularly important that the public have an opportunity to comment on the implementing legislation before it is drafted and considered in a procedure that provides only for an up or down vote, with no amendments allowed. These hearings provide such a timely opportunity, for which AIA thanks you.

Turning to the codes, AIA is interested in four of them: One, the Valuation Code; two, the Safeguards Code; three, the Standards Code; and four, the Antidumping Code. We are most concerned in the multinational trade negotiations about protectionism, and thus I come to the Antidumping Act. For this reason, I have asked Mr. Rehm, our special counsel, to discuss our interest in this phase of the MTN.

Mr. Rehm?

Mr. REHM. Within my allotted 2 minutes—I think that is what is left to us—let me try to summarize very quickly seven specific amendments that we would suggest be included in this single omnibus bill. All of these would amend the Antidumping Act. We believe they conform to the principles of the Subsidies Code, and they are as follows.

We believe that the dumped imports should be a substantial cause of injury to the domestic industry. Presently the statute, the Antidumping Act, is silent on the degree of causality. The concept of substantial cause is taken from the escape clause.

We believe, consistent with the Subsidies Code, that the injury should be material, not merely a little more than de minimis, but material. That is, of importance, of consequence.

As to the question of trying to define the domestic industry for purposes of an antidumping proceeding, we believe it should be one that makes a product identical to, to closely resembling, the imported product. That is taken directly from the Subsidies Code.

We think the President should have authority, at least in certain cases, to countermand the imposition of dumping duties, as in the escape clause. We think he should not necessarily have to have them imposed in any case, whatever the economic consequences.

We believe that following the finding of dumping—and I know this is an idea that is being considered on the Hill as well as downtown—the Treasury Department should be authorized to require importers only to post bonds, not to pay provisional dumping duties, as Senator Danforth's bill would provide. We can go into that later, if you like.

We also believe that an importer should be entitled to have an antidumping investigation terminated if he provides a price assurance that he will not sell below fair value, whatever the margin of dumping.

Finally, we believe that a finding of dumping should be terminated—I think this is fairly obvious—when it is determined that the dumping duties are no longer needed to avoid material injury to the domestic industry in question. That is provided for in the Subsidies Code. It is not now in the Antidumping Act.

I think that is our 5 minutes.

42-978—1979——11

Senator MOYNIHAN. Thank you for a very succinct 5 minutes. I will ask the staff that Senator Danforth be told of Mr. Rehm's statement in case he wants to put a question to Mr. Rehm. You can answer it in writing.

Mr. REHM. I appreciate that very much, Senator Moynihan, and in fact, we were looking forward to a colloquy with Senator Danforth who, I think, may not fully agree with all of our proposals.

Senator MOYNIHAN. Blame the snow. We were supposed to have had our rules debate Monday and Tuesday, and no one was here Monday and Tuesday and Wednesday, and that is why this hearing was scheduled for today, when the Senate was not meant to be especially active.

Mr. REHM. We would certainly appreciate it, if it is possible.

Senator MOYNIHAN. He will be told.

Sir?

STATEMENT OF ROBERT M. McELWAINE, PRESIDENT, AMERICAN IMPORTED AUTOMOBILE DEALERS ASSOCIATION

Mr. McELWAINE. I will comment very briefly on the testimony which has been submitted in writing from the American Imported Automobile Dealers.

We support the concept of a uniform discipline for all trade-related matters. We feel that whenever trade is to be restrained, for whatever the reason, or whatever statutory authority it is done under, that there should be the same uniform criteria. It does not appear logical to us that trade should be restrained in antidumping actions mainly by the showing of more than de minimis injury.

While it is necessary to establish serious injury and safeguard actions, and certainly not necessary to show injury at all in countervailing duty instances, or in the establishment of orderly marketing agreements. If there is any justification for depriving the consumer of the established benefits of state, this includes a broader choice of goods and discipline for the domestic industry, greater innovation of product development. The rationale, it appears to us, should be the same in all cases.

We also feel that there should be one common criteria and that this material injury to the affected domestic industry. We also feel that material injury cannot be demonstrated unless you can show an absolute increase in imported goods. A relative increase in imports may demonstrate nothing more than the failure of the domestic industry to properly judge the marketplace, and such currently established criteria as a decrease in prices or the prevention of price increases may simply illustrate the disciplinary effect that imports have on prices generally.

I have a lawyer friend in the little town of Koons, Tex., who once described to me the basic principle of Texas jurisprudence of "Did he have it coming to him?" I think that principle should apply here to trade matters as well, that the domestic industry cannot show, or is unwilling to show, material injury, relief should not be greater nor should they be permitted to seek relief.

Without such proof, such things as countervailing duties or antidumping penalties or safeguard actions or orderly marketing agreements are in the best sense just protectionist devices to remove competition for domestic businesses, thereby enabling them to increase their profits at the expense of the consumer.

We are such a uniform criteria established for all restricted trade actions that it would also seem logical to us for a single agency to administer all such cases. Under these conditions AIDA would support bringing all trade matters under a single Cabinet-level agency as proposed in S. 337, the International Trade and Investment Act.

Certainly if we are to compete effectively in a world marketplace against countries that have taken steps to organize themselves effectively and efficiently, we have to coalesce our scattered and sometimes competitive agencies that currently deal with trade investment matters.

We feel strongly that abandonment of the most-favored-nation principle and the application of safeguard measures could very possibly permit a return to the kind of dangerous and misplaced protectionism that set the stage for the world depression in the 1930's.

Similarly, we feel that a safeguard code dispenses with the granting of substantially equivalent concessions, presenting the danger of a return to the perilous protectionist policies that the GATT was designed to prevent.

Finally, we ask that this code establish that the ability to import is a valuable property right, that it is entitled to the protection of due process under the Administrative Procedures Act.

The balance of our position is contained in our written statement, and we will be happy to answer any questions that the chairman may have.

Senator MOYNIHAN. I would just like to thank you for some very concise and very clear statements. You are on to something—the right to import. I am not sure it is a property right or not.

One of the great qualities of American society is that people can open up economic enterprises easily. Entry into this kind of thing is almost a civil right and certainly widely exercised.

I do not think there is any disposition at all in this committee to narrow that aspect of American economy.

Do I take it that you would be very much in favor of a Department of International Trade?

Mr. MCELWAINE. Under certain conditions, Mr. Chairman, and those conditions being that there is a uniform criteria for the application of restraints. Presently, with such varying criteria under different conditions, it would be very difficult for a single agency to administer it.

Senator MOYNIHAN. We have had that idea before us, have we not, but no precedent has been proposed?

Mr. MCELWAINE. It always has originated within the Congress.

Senator MOYNIHAN. It is something that we should be thinking more about as we go through this particular exercise, which will occupy a lot of our time.

I do want to thank you, Mr. Millet. I know Senator Ribicoff wishes he could be here to greet you in person. He not only has to be elsewhere but there are three other places he is supposed to be. He is only at one, but he does his best.

We thank you gentlemen very much.

[The prepared statements of Messrs. Millet and McElwaine follow:]

STATEMENT OF ROBERT T. MILLET, AUTOMOBILE IMPORTERS OF AMERICA, INC. CONCERNING THE MULTILATERAL TRADE NEGOTIATIONS

Mr. Chairman, members of the Subcommittee, my name is Ralph T. Millet. I am Chairman of the Board of the Automobile Importers of America, Inc. (AIA), as well as the U.S. Representative of SAAB-SCANIA of America, Inc. With me is our special counsel, John B. Rehm, of the Washington, D.C., law firm of Busby, Rehm and Leonard.

AIA consists of 17 automobile importers, including representatives of all major manufacturers of imported cars, except Volkswagen and Mercedes-Benz. A list of these companies is attached to this statement. The members of AIA account for over $5 billion of imported automotive products each year, and their stake in the results of the Multilateral Trade Negotiations (MTN) is therefore substantial.

Beyond the dollar amounts involved, however, we appear here today because:

(a) First, we applaud this country's liberal trade policy, which has fostered healthy and vigorous competition in the U.S. automobile industry—comprising both domestic and imported cars. As a result, consumers in this country have shared such benefits as greater choice, product innovation, lower prices, and energy savings.

(b) Second, we believe that the Multilateral Trade Negotiations (MTN) represent a major step forward in establishing "rules of the game" for international trade. In particular, the MTN should promote the objective of having all major automobile-producing countries import as freely as they export.

(c) Third, we believe that the MTN will provide the foundation of world trade for the next generation. Imports of automobiles have gradually increased over the last 30 years to about 17% of the U.S. market. They have done so without disrupting the domestic industry, which is currently making record profits. We hope to continue to benefit the American consumer for at least the next 30 years.

It is our understanding that the Administration will propose a single omnibus bill to the Congress to implement the package of codes now emerging from the MTN. It seems quite clear that this bill will establish the statutory framework for U.S. foreign trade policy for years to come. It is therefore particularly important that the public have an opportunity to comment on the implementing legislation before it is drafted and considered in a procedure that provides only for an up or down vote, with no amendments allowed. These hearings provide such a timely opportunity for which AIA thanks you.

Turning to the codes, AIA is interested in four of them:

(1) The Valuation Code.
(2) The Safeguards Code.
(3) The Standards Code.
(4) The Antidumping Code.

Let me state briefly AIA's position on each.

AIA endorses the Valuation Code and believes that it provides a sound and workable basis for appraising imported goods. It largely reflects U.S. practices, beneficially simplified. Without changing duty rates, it should eliminate much of the bureaucratic arbitrariness that has existed particularly in other countries. We believe that it can be readily translated into statutory form.

AIA supports the Safeguards Code insofar as it is modelled upon our escape clause, which, in our judgment, is a fair and reasonable statute. But we would oppose any amendments to the escape clause that would dilute the present standards that require that increased imports be a substantial cause of serious injury to the domestic industry.

We are concerned, however, about the proposal to permit selective, that is, discriminatory, escape-clause action against only one or a few countries. It seems to us that such an authority risks being seriously abused unless it is carefully circumscribed. Accordingly a number of demanding preconditions should have to be satisfied before the principle of selectivity could be invoked. For example, the country or countries to be singled out should not only account for the overwhelming portion of total imports of the product involved but should have also been responsible for the rapid increase in their portion. Moreover, the country or countries to be singled out should include all the countries with a clear comparative advantage in making the product, so that other suppliers will not be able to take advantage of the selective relief as long as it lasts.

AIA supports the Standards Code, although we understand that the legislation to implement this Code falls within the jurisdiction of another committee. This Code embodies much of U.S. practice concerning the procedures that must be satisfied before a Government agency can put new technical standards into effect. It has been AIA's general experience that the Federal Government has not used technical standards in the automotive field as non-tariff barriers. They have been promulgated and enforced for the most part in a non-discriminatory way.

Of the various elements of the legislation to implement the MTN package, AIA is most concerned about the amendments that may be proposed to the Antidumping Act. We understand that the United States has agreed to make changes in the existing Antidumping Code to conform to principles of the Subsidies Code. Some of these changes will presumably require amendments to the Act. Moreover, it seems quite likely that the Administration will propose other amendments to the Act that it will consider appropriae, if not actually required to conform to the Subsidies Code. We therefore fear that the Antidumping Act may become a primary target for protectionist amendments.

Therefore, I should now like to ask our special counsel, Mr. Rehm, to discuss seven specific amendments to the Antidumping Act that AIA urges be included in the implementing legislation. These amendments would go far, in our judgment, to ensure that the Act is not distorted into an unfair and unreasonable statute.

STATEMENT OF JOHN B. REHM

Let me say, at the outset, that these seven suggested amendments are all consistent with the Subsidies Code and in some cases are either required or suggested by that Code. As I discuss each amendment, I will cite the relevant provision of the Subsidies Code.

First, the Act should be amended to provide that the imports allegedly sold at less than fair value must be "a substantial cause" of injury to the domestic industry. As you know, the Act presently establishes no degree of causality, and we believe that the test of substantial cause, which is now in the escape clause, is a reasonable and modest one. Surely, dumping duties should not be imposed if the causal relationship is only tenuous or slight. This amendment is consistent with paragraph IF5 of the Subsidies Code.

Second, the Act should be amended to provide that the quantum of injury must be "material". At present, the International Trade Commission construes the Act to require that the necessary quantum of injury be only more than de minimis. This is not an appropriate standard, in our view, and footnote 2 to paragraph IA1 of the Subsidies Code requires that the injury be material. And by "material", we mean what the dictionary says, that is, having importance or consequence.

Third, under the Act the domestic industry should be defined as one making a product that is identical to, or has characteristics closely resembling those of, the imported product. We believe that this is an appropriate way of defining the domestic industry for purposes of both the Antidumping Act and the countervailing duty statute. Indeed, it is required by footnote 3 to paragraph 1F1 of the Subsidies Code.

Fourth, the Act should be amended so that the President has the authority to countermand the imposition of dumping duties following a finding of dumping. It is simply unwise, in our view, to require that each and every dumping finding be implemented, regardless of the impact it may have on the economy. At the same time, we believe that the President should not be able to set aside such a finding unless he can cite specific adverse domestic economic consequences that would follow from the imposition of dumping duties. This amendment is consistent with paragraph ICI of the Subsidies Code.

Fifth, the Act should be amended to authorize the Treasury Department, following a finding of dumping, to require only bonds—as opposed to the deposit of cash—of importers. We are aware that the Treasury Department has proposed amending the antidumping regulations so that importers would have to pay provisional dumping duties after a finding of dumping, but we feel that this is wrong and unfair. An importer should have to pay dumping duties only when his own goods are, in fact, found to be sold below the home market price. Under Treasury's proposal, any importer would have to pay provisional duties whether or not his goods are, in fact being dumped. This violates basic principles of fairness and due process. This amendment is consistent with paragraph ICI of the Subsidies Code.

Sixth the Act should be amended to provide that an importer is entitled to have an antidumping investigation terminated by providing assurances that his price will not fall below fair value. At present, under the antidumping regulations, the Treasury Department will accept such price assurances only if the margin of dumping is found to be less than 1%. This is contrary to the purpose of the Act, which is to eliminate the dumping margin. If it can be eliminated by voluntary action on the part of the importer, instead of by the imposition of dumping duties, then the purpose of the Act is equally served. This amendment is consistent with paragraph IC5 of the Subsidies Code.

Seventh, the Act should be amended to provide that a finding of dumping shall be terminated when it is determined that dumping duties are no longer needed to avoid material injury to the affected domestic industry. If such a determination can be made, then there is obviously no justification for keeping the dumping finding in force. This amendment is required by paragraph IC8 of the Subsidies Code.

In conclusion, AIA urges that the Subcommittee be particularly attentive to any proposal to amend the Antidumping Act, in order to avoid those that would be inconsistent with our international obligations or that would render the Act an unfair statute.

Thank you.

Statement of Robert M. McElwaine, President, American Imported Automobile Dealers Association

Mr. Chairman; on behalf of the 4750 American businesses engaged in the sales and service of imported automobiles and their 150,000 employees, I welcome this opportunity to comment on issues relating to implementation of the Multilateral Trade Negotiations. Our position on the issues delineated by the committee for these hearings can be summarized as follows:

1. The American Imported Automobile Dealers Association supports the concept that material injury to domestic industry, or the threat thereon, must be established before countervailing duties may be imposed for all products, dutiable as well as non-dutiable.
2. Definition of injury should, in all cases, be related to an absolute increase in imports and not limited to either relative increases or simply to factors resulting from the price-disciplining role of imports.
3. AIADA supports the concept of a standard criteria of injury for all trade practice matters. No domestic industry should be permitted to seek relief unless it has suffered material injury from foreign imports.
4. AIADA supports, under certain conditions, the concept of a single agency to administer anti-dumping and subsidies cases; we feel the present world market requires a unitary, cabinet-level agency to deal with all foreign trade and investment matters.
5. AIADA opposes the application of safeguard action on a selective basis and asks the Senate to uphold the time-tested tradition of Most-Favored-Nation application of restraints.
6. AIADA supports the application of safeguard action for a limited period of time and on a diminishing basis.
7. AIADA endorses retention of the vital GATT concept requiring compensation to nations affected by safeguard actions.
8. We favor retention of Article XIX of the GATT and inclusion of all trade restraint action under provisions of this article.
9. In the new uniform procedures, we ask, as an urgent matter, the provision of safeguards for due process rights and the protection of the Administrative Procedures Act.

Section 1

The benefits of imported goods, including broader consumer choice, price competition and discipline for domestic products, and greater innovation in product development, are too well established to permit the exclusion of foreign goods unless material injury to domestic industry can be shown. In this respect, the code now being negotiated is a substantial improvement over the previous practice, which permitted the establishment of countervailing duties (on dutiable products) without the necessity of establishing injury.

Recent experience has shown dramatically that increases in the price of imports, either due to current fluctuations or trigger price mechanisms, can be hugely inflationary to the U.S. economy. The public should not be asked to pay such a price unless material injury to a domestic industry can be demonstrated to have occurred as a consequence of an export subsidy.

SECTION 2

Material injury, by definition, could hardly be established unless it could be shown that an absolute increase in imports had taken place. Merely to consider the price discipline imports have exerted on domestic products would appear to be totally inadequate in determining sufficient injury to justify countervailing duties. Such criteria as the reduction in prices, or the prevention of price increases caused by subsidized imports should be scrutinized carefully and somewhat skeptically unless an absolute increase in imports can be shown to have occurred simultaneously.

By the same standards, a relative increase in imports—one in which imports themselves have not increased, but domestic production, or the percentage of domestic production consumed, may have fallen—would seem insufficient proof of injury to justify such drastic action as the imposition of countervailing duties.

As J. H. Jackson, in "World Trade and the Law of GATT," pointed out:

"This concept of 'relative increase' seems inappropriate in an escape clause that is based on the policy of allocating the burdens of market adjustment . . . Here *no* actual increase in imports has occurred, so it seems very difficult to justify placing this burden on the foreign products. It appears that the 'relative' increase concept is a protective device."

SECTION 3

AIADA's third point is a logical development of the first two. If material injury is to be a criteria for countervailing duties, why should the standard be less for any other imposition of trade restrictions, for whatever the cause? We support a concept of uniform discipline for all trade-related matters. This would include countervailing duties, safeguard actions, antidumping actions and orderly marketing agreements.

Since the benefits of imports to the consumer are acknowledged, why should the buyer be forced to pay higher prices for goods, or have his choice restricted, or competition be lessened in the marketplace, unless it can be established that trade practices are causing material injury to a domestic industry?

Without proof of material injury, countervailing duties, anti-dumping penalties, or orderly marketing arrangements are, in the baldest sense, protectionist devices to remove competition for domestic businesses, thereby enabling them to increase their profits at the expense of the consumer.

SECTION 4

Were the criteria the same for tariff action in subsidies or anti-dumping cases, as it should be, then it would only be logical for a single agency to administer all such cases. The question remains, of course, which agency? Presently, the Department of the Treasury, the International Trade Commission and the Office of the Special Trade Representative all have varying degrees of interest in such cases. There is a persuasive logic in bringing all such matters under a cabinet-level agency, as proposed in S. 377, the International Trade and Investment Reorganization Act.

Certainly, if we are to compete effectively in the world marketplace against countries that have organized themselves efficiently, we must soon take steps to coalesce our scattered and sometimes competitive agencies dealing with trade and investment matters.

I realize that such a proposal will have to triumph over inertia and bureaucratic resistance, but it is obviously in the national interest that the current partisan conflict be ended.

SECTION 5

One of the most ominous provisions of the new code is that which would permit application of safeguard measures on a selective, or country-by-country basis. This abandonment of one of the structural foundations of our expanded trade prosperity in the post-war years could trigger a wave of protectionist actions that would have serious impact on the world economy.

It would enable certain multi-national blocs to "gang up" on one nation that had caused offense merely by being too competitive, too aggressive for the comfortable tastes of more entrenched economies. It represents an abandonment of one of the first principles of the General Agreement on Tariffs and Trade and could permit a return to the kind of dangerous and misplaced protectionist policies that set the stage for the world depression of the thirties.

SECTION 6

The use of safeguard procedures to protect a domestic industry suffering material injury from imported competition is a recognized and accepted method of providing the affected industry with the opportunity to become more competitive. By their very nature, such procedures are designed to be temporary. Strict limitations should be put on their application, so that they do not become permanent, consumer-endowed supports for non-competitive industries. Further, such protections from the normal rigors of the marketplace should be reduced at brief intervals, thereby putting pressure for greater efficiencies and productivity on the affected industry immediately and with increasing severity.

It is AIADA's opinion that, in most cases, the time periods permitted have been altogether too long and have encouraged manufacturers to regard such protection as quasi-permanent support from the government in their non-competitive postures.

SECTION 7

One of the cornerstones of the GATT is the Article XIX provision which requires compensation to the affected countries from nations invoking the safeguards procedures. AIDA strongly opposes any change in the Code which would circumvent this provision.

The escape clause of Article XIX has been applied in a variety of ways by GATT signatories and the "voluntary restraint arrangements" and other trade-limiting devices have grown apace in recent years. Nevertheless, to "reform" Article XIX by eliminating the sanction which permits it to work—compensation—would be counter-productive, as overall uniformity would be achieved at the price of trade-limiting policies by our trade partners.

A safeguards code which entirely dispenses with the granting of substantially equivalent concessions presents the danger of a return to the misplaced protectionist policies which GATT was designed to prevent.

SECTION 8

Overall, we feel that the basic premise of Article XIX of the GATT has proved workable and efficient, over the years, in assuring the interests of both the exporting and importing nations, and in preventing the escalation of protectionist practices by all signatories. Abandonment of Article XIX, or the crippling of it through meat-axe amendments would seriously threaten the future of expanding world trade.

SECTION 9

AIADA favors safeguards for the rights of due process in trade-related matters. The ability to import is a valuable property right that should not be eliminated without adequate due process. We ask that the Administrative Procedures Act be observed in all matters pertaining to trade restrictions. By way of example, there are 13,000 U.S. businesses dependent, in varying degrees, on the importation of automobiles. Approximately 4,750 of these are solely dependent on these imports.

These 4,750 American small businesses represent assets of nearly five billion dollars. They employ nearly 150,000 American workers, with an annual payroll of 1.8 billion dollars. Obviously, substantial property rights are involved.

Steps taken to restrict the importation of automobiles would substantially reduce the value of these property rights and it would appear only correct that any such actions shoud not be taken without adequate due process.

Senator MOYNIHAN. Mr. George Prill and associates. Mr. Prill, would you come forward? We welcome you.

STATEMENT OF GEORGE C. PRILL, GEORGE C. PRILL & ASSOCIATES, INC.

Mr. PRILL. Thank you, Mr. Chairman. I am a consultant to the aerospace industry, and I have served as chairman of the Aerospace Industries Advisory Committee in the trade negotiations since that committee has been formed. While individual members of the committee, who are members of the industry, might vary a little bit in what I would say today, I think I can assure you I am a spokesman for the industry, the civil aircraft manufacturing industry, and I have been so designated by the group.

Detailed industry views at this juncture in the multilateral trade negotiations are attached, Mr. Chairman.

Senator MOYNIHAN. We will put those in the record.

Mr. PRILL. They are obviously not final, the critical issues are still unresolved in the aircraft agreement itself and in the other prospective agrements on nontariff measures.

Mr. Denison of the AFL-CIO mentioned the aircraft agreement; he does not know what is in it. He is right; it is not yet resolved; some of the critical issues have to be still nailed down.

Our own key plea to the Congress, as well as to the administration, is to not look at this MTN—long and laborious as it has been—as an end in itself or as a stopping point in the process of international trade negotiation. On the contrary, it is a very significant step forward in establishing a system of international agreements in trade that, we trust, will permit the U.S. industries that we know to be effective and flexible to compete on a fair basis with State owned, directed, or supported companies.

You have heard quite a bit of testimony on this subject already, Mr. Chairman.

Many question the need for an aircraft industry that presently has such a large share of the civil aircraft market to be concerned with this subject. The reason is simple—we are certain that if other countries close their markets through government directed procurements, tariffs, quotas, or subsidies, while we keep the U.S. market open, the situation will change in the next decade. We have plenty of evidence to show that this is entirely possible.

We do not want a closed U.S. market and have urged that it be fully opened—in return for similar actions elsewhere. It is human nature to prefer the "heads I win, tails you lose" option, and we should not be surprised or dismayed that other countries if permitted to follow this course will do so. The United States must resist this now.

The MTN, and the aircraft agreement within the MTN, has brought us to a decision point, and we have to decide.

The question is complicated. Differing between subsidies, loans, and investments in State-owned companies is not simple. There are strong incentives to keep it complicated.

Research and development budgets in high technology industries are part and parcel of a country's investment in national defense, transportation and communications systems, and technological progress. If applied in a way to distort fair competition, they can also be problems.

The aircraft industries of other countries—primarily those of Europe, Canada, and Japan, but including Israel, Brazil, and Australia—are interrelated to the U.S. industry as customers, suppliers, and partners in the production of defense equipment as well as civil aircraft. We are not trying to damage or trap them.

That is something I want to put firmly on the record. We try to assure everybody of that. They are suspicious of our industry. They think we are up to some clever maneuvers on occasion. We are not.

We are trying to establish a meeting of the minds for the next two decades, at least, on fair trade.

We do not think of our own industry as impregnable. Many people have said the U.S. industry is so strong that no one can touch it. We do not think of ourselves in that way at all. We think we are quite "pregnable," in fact. We need agreement on rules that will not reduce competition. We are not looking at setting up some kind of world cartel in aircraft; we believe competition will actually increase, but in a way that we can compete on equal terms.

In summary, the U.S. civil aircraft industry is willing to recommend the elimination of U.S. tariffs if, and only if, satisfactory agreement is reached on Government-directed procurement, demands for offset production and subsidies, including subsidies granted by the use of export credits.

The MTN codes, including the aircraft agreement, are first steps in this direction. They are far from perfect, and while we believe we will recommend their adoption, we cannot commit ourselves to that course until we see the end product. In any event, it is clear to all who have been involved in this process that the implementing legislation must establish procedures for continuing industry participation in the ongoing process of establishing case law and in the review and amendments of the agreements themselves.

We do not see another round of trade agreements. We see a continuing process.

One strong recommendation that we believe is very appropriate at this stage of congressional action is that the Congress not confine itself to a minimalist effort by implementing the various agreements in the simplest manner possible. Rather, this is the year to adopt a positive export policy for the United States, to use the MTN not as a crutch but a springboard, to further the U.S. international economic position.

This is not the time for detailed proposals, but you will not find our industry bashful about making such proposals when appropriate. The MTN agreements can be a significant plus for U.S. industry if they are built upon and utilized vigorously. If they are not, the MTN will go down in history as an extremely costly boondoggle.

Thank you, Mr. Chairman.

Senator MOYNIHAN. You say that you are not going to be bashful about detailed proposals. Do you mean when you see the published agreements? Or what do you mean?

Mr. PRILL. On that and on the entire question of a national export policy and on structuring the Government and the industry for a much more aggressive role in exporting and in balancing our trade with other countries. There was considerable reference this morning to a Department of International Trade and Investment. Senator Ribicoff was asking questions about productivity, research, and development. All of these are key factors, we feel, in the position of U.S. industry in the world market.

The MTN itself, of course, does not address those. The MTN can be implemented in a very simple way. I am sure that is an overstatement. I do not think anything can be implemented in a simple way, but relatively simple.

Senator MOYNIHAN. I see your point that the time has come for export policy, and the aircraft industry is certainly important—if it were not for airplanes and wheat, I do not know where we would be right now.

Mr. PRILL. We regard our farmers as a high technology industry, too.

Senator MOYNIHAN. Most assuredly. It is distinguished from the rest of the world's agriculture primarily in that respect.

The aircraft industry for the longest time benefited, did it not, from the fact that most of our transport planes were originally built on military prototypes. Am I wrong on that?

Mr. PRILL. I do not think that is correct, Mr. Chairman. Obviously, a great deal of technology does come out of military development; improvement of materials, for example. But the actual planes themselves, if you look at procurements of the last 5, 10, 15, and 20 years, have been the other way around. The commercial side is actually subsidizing, if you will, the military.

The last big procurement by the Air Force for the advanced tanker cargo aircraft was the DC–10. The command posts are 747's; the AWACS program were 707's. The most modern Navy antisubmarine warfare airplane is a derivative of the Lockheed Electra. The original tankers, the KC–135, came out of Boeing's investment in a prototype commercial airplane.

Senator MOYNIHAN. I was on the committee that President Kennedy set up to consider a supersonic plane. Secretary Brown made it very clear that the reason we were going to a civilian option was because there was no military use.

I will always remember the change in environmental codes. At one point the Department of Defense gave us an operating cost estimate on the mach III, and mach II planes and they estimated that with the mach III plane, 18 percent of the operating costs would be the replacement of broken glass and plaster. They would swoop over Long Island, and snap, crackle and pop. Then they would swoop out again.

Years later, the decisive vote against the supersonic plane was that it might crack Canadian goose eggs, I believe. What does not change is the effectiveness of the American aircraft industry. Tell the fellows we said hello. We are very proud of them. If anything, your worldwide position has settled, has it not? The British have dropped out.

Mr. PRILL. I think we peeked some years ago. In terms of percent of market we have been going down in recent years. The A–300 airbus is a product of Airbus Industries, a consortium led by France and Germany. Britain is now a member of the consortium. Other European countries also participate.

It is a fine airplane, and we see that organization developing a whole line.

Senator MOYNIHAN. I see our colleague has arrived. Senator Nelson?

Senator NELSON. No questions.

Senator MOYNIHAN. With that, we thank you very much for being here, and we will be in touch with you.

[The prepared statement of Mr. Prill follows:]

Testimony of Mr. George C. Prill, on Behalf of Civilian Aircraft Manufacturing Industry

Mr. Chairman, I appreciate the opportunity of appearing before the committee today. I am a consultant to the aerospace industry and have served as chairman of the Aerospace ISAC (ISAC 24) since its inception. While individual members of the ISAC and the companies in the industry might express their opinions somewhat differently than I will today, I believe I can assure you that this statement is representative of industry feeling. Your announcement of these hearings requested a designated spokesman and I have been so designated by the industry.

The detailed industry views at this juncture in the multi-lateral trade negotiation are attached. They are obviously not final—critical issues are still unresolved in the aircraft agreement itself and in the other prospective agreements on non-tariff measures.

Our own key plea to the congress as well as to the administration is to not look at this MTN—long and laborious as it has been—as an end in itself or as a stopping point in the process of international trade negotiation. On the contrary, it is a very significant step forward in establishing a system of international agreements in trade that, we trust, will permit the United States industries that we know to be effective and flexible to compete on a fair basis with state owned, directed or supported companies.

Many question the need for an aircraft industry that presently has such a large share of the civil aircraft market to be concerned with this subject. The reason is simple—we are certain that if other countries close their markets through government directed procurements, tariffs, quotas or subsidies while we keep the U.S. market open the situation will change in the next decade. We do not want a closed U.S. market and have urged that it be fully opened—in return for similar actions elsewhere. It is human nature to prefer the "heads I win, tails you lose" option and we should not be surprised or dismayed that other countries if permitted to follow this course, they will do so. The U.S. must resist this now.

The question is complicated. Differing between "subsidies", "loans" and "investments" in state-owned companies is not simple. There are strong incentives to keep it complicated.

Research and development budgets in high technology industries are part and parcel of a country's investment in national defense, transportation and communications systems, and technological progress. If applied in a way to distort fair competition, they can also be problems.

The aircraft industries of other countries—primarily those of Europe, Canada and Japan—but including Israel, Brazil and Australia, are interrelated to the U.S. industry as customers, suppliers and partners in the production of defense equipment as well as civil aircraft. We are not trying to damage or trap them. On the other hand, we do not think of our industry as impregnable. We need agreement on rules which will not reduce competition, will actually increase competition—but which will insure that the U.S. industry is able to operate on equal terms.

In summary, the U.S. civil aircraft industry is willing to recommend the elimination of U.S. tariffs if, and only if, satisfactory agreement is reached on government directed procurement, demands for offset production and subsidies granted by the use of export credits.

The MTN codes, including the aircraft agreement, are first steps in this direction. They are far from perfect and while we believe we will recommend their adoption, we can not commit ourselves to that course until we see the end product. In any event, it is clear to all who have been involved in this process that the implementing legislation must establish procedures for continuing industry participation in the ongoing process of establishing "case law" and in the review and amendments of the agreements themselves.

One strong recommendation that we believe is very appropriate at this stage of congressional action is that the congress not define itself to a minimalist effort by implementing the various agreements in the simplest manner possible. Rather, this is the year to adopt a positive export policy for the United States, to use the MTN not as a crutch but a springboard, to further U.S. international economic position.

This is not the time for detailed proposals but you will not find our industry bashful about making such proposals when appropriate. The MTN agreements can be a significant plus for U.S. industry if they are built upon and utilized vigorously. If they are not, the MTN will go down in history as an extremely costly boondoggle.

Thank you, Mr. Chairman.

MULTILATERAL TRADE NEGOTIATIONS

This preliminary report to the Congress concerning the Multilateral Trade Negotiations is not intended to be complete, but is rather a summary of aircraft industry's view of the negotiations at the near-completion of the treaty. The industry strongly supports the aims of the negotiations, but points out the obvious, i.e.,—the aims are still in negotiations.

AIRCRAFT AGREEMENT

The Aircraft Agreement which is currently under negotiation represents a new approach in the MTN, recognizing the uniqueness of the aircraft manufacturing industry as a factor in international trade. Civil aircraft exports (including aircraft engines and aircraft parts) were valued at better than $5 billion in 1977, and may exceed $7 billion when all of the figures are in for 1978. Since comparable imports were valued at less than $1 billion, civil aircraft international trade makes a significant contribution to the nation's balance of trade.

The aircraft manufacturing industry has taken the position that "fair trade" in aircraft and related equipment will benefit the U.S. industry. The aircraft agreement should serve in large measure to create the appropriate climate for such fair trade by bringing non-tariff measures used or potentially used by our trading partners under scrutiny at least, and, in some cases, under control. The agreement and the implementing legislation should also provide procedures by which the U.S. manufacturers may challenge practices which are deemed to be in violation of the agreed upon rules for fair trade.

It is expected that only a limited number of countries—but including the E.C., Japan, Canada, and the U.S.—will accept the opportunity to sign the Aircraft Agreement. However, the industry urges continuing efforts to encourage other aircraft manufacturing nations to sign the Agreement. Towards this end, the U.S. industry believes that the benefits accruing to the signatories should be restricted to the signatories.

Under the presently negotiated arrangement, there is no tariff incentive for non signatories to adhere to the Aircraft Agreement. In fact, a strong tariff disincentive exists in that non signatories would benefit from zero tariffs in the signatory countries while retaining the freedom to impose protective tariffs for their own internal markets. U.S. industry urges that STR develop a method by which non signatories will be motivated to join the Aircraft Agreements. Possible methods include a two tier U.S. duty rate and/or strong non-tariff measures which render the U.S. domestic market less accessible to non signatories.

The industry has been told that conditional MFN treatment of tariff issues is not appropriate under the GATT, but believes that this is a weakness of the GATT rather than a strength, and that changes in the GATT should be sought so that only signatories to agreements would reap the benefits of such agreements.

The elimination of the aircraft tariff is to be extended to all civil aircraft, engines, equipment and related parts. (Civil aircraft is understood to refer to aircraft for other than military use.) This will require the development of tariff codes covering similar products under the BTN, the TSUSA and the Canadian tariff codes so that broad and equivalent reductions in tariffs may be achieved by all signatories.

The Aircraft Agreement addresses many of the non-tariff measures of concern to the industry and takes the first major step towards bringing non-tariff barriers (NTBs) under control on an international basis. The NTB restrictions are complex and clearly open to a variety of interpretations. The enabling legislation should include a method of monitoring and responding to actions resulting from the Agreement. Only with prompt recognition of possible violations of the Agreement can action be taken to resolve such areas of conflict, thereby building "case law" to flesh out the guidebook to fair trade contained in the Aircraft Agreement. Industry participation in this process is essential.

SUBSIDIES AND COUNTERVAILING DUTIES

The aircraft trade committee endorses the code on Subsidies and Countervailing Duties while recognizing that the code is complex and will certainly lead to much discussion in the future. The difficulty in differentiating between "subsidies," "loans" and "investments" in government-owned industries, the affect of military procurements, and the use of governments funds to foster high technology research and development may well lead to distrust among the signatories. Such concerns and questions can only be resolved by timely and candid discussions. The MTN subsidy Code is a first step in that direction. It is not a completed task.

Of particular note, the major trading nations must develop a way of effectively dealing with the issue of subsidy by the use of export credits. The approach through the OECD has not been successful to date. This is an issue that has caused concern in the Congress and is one that must be addressed in the near future.

TECHNICAL BARRIERS TO TRADE (STANDARDS)

The code on technical Barriers is a good one and should be a major step forward in the adoption of international standards satisfactory to the U.S. industry. It will help U.S. aerospace exports.

GOVERNMENT PROCUREMENT

The code on Government Procurement, because it will not apply to military procurements or to purchases by government-owned airlines, is not of direct interest to the aircraft industry, but is considered to be a reasonable first approach to the opening of here-to-fore unapproachable markets for US. high technology industries.

The Aircraft Agreement contains some additional language on the subject of procurements by government-directed airlines which, it is hoped, will eliminate instances of governments directing their airlines concerning the source and/or type of aircraft to be purchased for use by their national airlines.

REFORM OF THE INTERNATIONAL TRADING SYSTEM (FRAMEWORK)

The coce on GATT Framework provides for the future. If we recognize that this MTN round has been an important step toward developing a system for regulating—on a fair trade basis—the world's cross-border business, and will build upon it, we will have achieved a major victory. If provision for revision and clarification is not utilized to the fullest extent possible, little will have been achieved. It is recognized that in high technology industries—such as aircraft—new programs are undertaken with world markets in mind. To limit markets for such goods to only the domestic market would cripple investment, reduce incentives for research and development and generally slow technological progress.

SAFEGUARDS

The aircraft trade committee generally endorses the code on safeguards as it is expected to be negotiated. Final endorsement will be withheld until such a time as the completed text of the code is available for review and consideration.

LICENSING

The code on licensing has not been a matter of major discussion among the members of the aircraft committee, but is deemed to be an improvement to the current international practices in the area of licensing.

The code deals with the administration of import licensing procedures rather than with the existence or extent of quantitative import restrictions. The committee is in favor of easement of import licensing procedures and obstructions. With that in mind, the committee suggests that the implementing legislation take into consideration certain problems unique to aircraft licensing. The FAA is charged with the responsibility to certify aircraft before sale in the United States. The FAA is consequently besieged with requests from foreign manufacturers for certification of the aircraft and equipment produced abroad for sale and use in the United States. In the spirit of fair trade, in order to expedite the certification of foreign built aircraft without placing an undue burden on the U.S. taxpayers, there should be a review of the desirability of legislation that would permit the FAA to charge for the certification of foreign aircraft.

CUSTOMS VALUATION

The committee has only a minor interest in the code on Customs Valuation, but generally endorses the concepts contained in the Code.

COMMERCIAL COUNTERFEITING

The Commercial Counterfeiting code concerns itself with the counterfeiting of trade-marked items and is of only general concern to the aircraft industry.

Senator MOYNIHAN. Now, I would like to turn the chair over, if I may, to Senator Nelson, as we are to hear from Mr. Patrick Healy and Mr. Douglas Caruso. If you gentlemen would come forward?

Senator NELSON. The committee is very pleased to have you appear this morning to present testimony. I see you both have printed testimony. Your testimony will be printed in full in the record. Go ahead and present it as you desire.

STATEMENTS OF PATRICK HEALY, SECRETARY, NATIONAL MILK PRODUCERS FEDERATION AND DOUGLAS J. CARUSO, GENERAL MANAGER, FARMERS UNION MILK MARKETING CORPORATION

Mr. HEALY. Thank you, Mr. Chairman. Mr. Caruso and I have agreed that I will make whatever presentation is made. I have read his statement and I fully endorse it. He tells me he has read and fully endorses mine.

Senator MOYNIHAN. It sounds like collusion to me.

Mr. HEALY. The National Milk Producers Federation is a national farm commodity organization representing dairy farmers and the cooperative dairy marketing associations they own and operate throughout the United States. Since its founding in 1916, the Federation has worked toward the development of legislation and government programs which will provide the basis for a national food policy. This includes the assurances needed by producers to make the commitment necessary to bring forth the product demanded by the consumer and the stability of market essential to a strong agriculture.

Among the major issues the Federation has concerned itself with is the maintenance of effective limitations on the import of dairy products into the market. In the absence of such limitations, this market would quickly become the dumping ground for world dairy surplus. Such a situation would render totally ineffective the marketing programs farmers have developed through their investment in and commitment to cooperatives. It would negate the effectiveness of the dairy price support program which the Congress has enacted as a means of assuring the domestic production of adequate milk and milk products to meet present and anticipated future demand. It would, ultimately, result in consumer reliance on more costly imported products for a basic element of the national food supply.

Since the earliest discussions of the Nixon round of multilateral trade negotiations, the dairy farmers of this Nation have been gravely concerned that the outcome would mean significant damage to their industry. Other major dairy producing nations have long argued that the import limitations maintained by the United States are a trade barrier of the most noxious type. There are those in this country—in our own Government—who are all too willing to accept this argument either on the basis of misplaced philosophical attitudes or simply for the purpose of making a deal.

The so-called Flanigan report which emerged in 1972 set forth a negotiating strategy which used the U.S. dairy industry as the bargaining chip to gain concessions in other areas. While that report has been repudiated as the basis of policy by this and previous administrations and it has been shown to be totally devoid of any legitimacy on an economic or any other basis, the little we have been able to learn of the results of the negotiations indicates that the Flanigan philosophy has, indeed, been implemented.

It has long been recognized that the ability of the United States to develop and maintain domestic agricultural programs such as the dairy price support program would be seriously undermined if this market could be used as a dumping ground for surplus production of other nations. As a result, section 22 of the Agricultural Adjustment Act was approved in 1935 to provide the basis for increased tariffs or import quotas on agricultural imports which interfere with or threaten to interfere with the effective operation of a domestic price support or similar program.

Even before this, however, Congress had enacted the countervailing duty statute which was designed to prevent injury to domestic industry by export subsidy programs of other nations. Simply put, this law requires the Secretary of the Treasury to collect an additional duty, equal to any bounty, grant or subsidy, on any product which enters the United States with the assistance of such bounty, grant or subsidy. This statute is simple and straightforward in its expression. It is mandatory in its application.

The dairy industry will be affected by three specific actions taken as part of these talks: one, an expansion of cheese imports; two, the nullification of the countervailing duty statute by the specific recognition of the right of exporting nations to employ export subsidies and the addition of an injury test to the U.S. countervailing duty statute; and three, an international dairy arrangement.

Basically, on information presently available, the trade talks will mean an expansion of cheese imports of 67 million pounds over 1977 levels. This represents an increase of one-third, with most of the additional product entering this market with the assistance of substantial export subsidies. At the present time, cheese import quotas total 127,789,600 pounds. These imports, plus shipments of nonquota varieties resulted in total imports in 1977 of 209.4 million pounds.

Experience has shown that each new quota level has simply been a new, higher plateau from which to work. In other words, the quotas always rise, they never go down. Illustrative of this is the situation with the pricebreak quotas which were originally established in 1968. In 1972, the pricebreak system was reworked and the quotas "adjusted." These "adjustments" resulted in a 378-percent increase in Swiss cheese quotas, a 242-percent increase for Gruyere-process cheese, and a 62-percent increase in the other, NSPF category.

In the case of cheddar cheese, the original quota was set in 1953. In 1966, the quota was raised by 33 percent and in 1967 it was increased again by 261 percent.

In addition to these specific increases, new quota categories have been created to award the ability of exporters to evade established quotas with a share of this market. The quota on Italian cheese not in original loaves resulted when exporters found they could evade the established quota on hard Italian cheese varieties by the simple expedient of cutting the loaves. The great expansion of Swiss imports in the mid-1960's came when the low-grade "grinders" Swiss was imported for use in processed cheese products.

Senator NELSON. They were importing them for processed cheese?

Mr. HEALY. This cheese was used in making processed cheese products in U.S. plants. This put the imports in at a price-making level, a dangerous thing for milk prices in this country.

Senator NELSON. Was the price of their grinder lower than the price of ours?

Mr. HEALY. No, sir, not in the country of origin.

In this country, for example, our basic milk price today is $9.64. If you compute that for Europe, the cheap exporter of these items, it is about $12.25. As you know, the people of Wisconsin would float this country off its moorings if we had a basic price of $12.25.

They subsidize it down just low enough to make it attractive in this country, an abhorrent situation.

Now, when it is argued that the U.S. industry can easily absorb the additional imports, we fail to take consideration of the question back to its basic point of impact—the farm. While cheese consumption has expanded sharply in recent years, this expansion has generally been met by shifting milk from other products where consumption has declined. The fact of the matter, regardless of how it is addressed, is that less milk will be needed off U.S. farms in order to make room in this market for the additional products of European dairy farmers.

1977 imports totaled 1,968 million pounds of milk equivalent fat basis. The cheese import expansion would add 670 million pounds milk equivalent to that. Measuring the impact on farm income on the basis of the USDA research, yields a $343 million negative impact for the expansion alone and an impact of over $1.35 billion for total imports under the level proposed as the result of the trade talks.

The additional imports will displace domestic milk production that would otherwise move into cheese output. This displacement, in the short run, will be accommodated by additional Commodity Credit Corporation purchases of dairy products under the price support program. To accommodate the full extent of the increased imports would add $75 million to CCC costs.

In the longer term, the accommodation must be made on the farm through shrinkage of milk production. The equivalent of 670 million pounds of milk represents the output of more than 60,000 average dairy cows at 1978 production levels.

We who represent farmers disagree with the STR assessment that the trade package will have little impact on dairy farmers. It amounts to some 1,200 to 1,500 dairy farmers who are going to have to be put off their farms—they are going to be put off their farms so as to make room in their market for production from abroad.

Senator NELSON. I might add, that for shipment into our marketplace of a product that is higher priced——

Mr. HEALY. Higher priced and subsidized by foreign governments to bring it down.

Mr. Chairman, I would ask your indulgence for one more thing that I want to address myself to, and that is the countervailing duty law, and I probably have more experience in this area than any person who will appear before you, because in 1973, I did go into the Federal courts to force the enforcement of this law.

Subsidized dairy products were being shipped into this country in 1973 and 1974 to the extent that these goods were solely responsible for the reduction in dairy farm income of about $2.5 billion. We went

42-978—1979——12

to court. We forced the enforcement of the countervailing duty law and dairy farm income went right back up.

We have heard this morning many suggestions for improvement of this law. The law is straightforward; it works. It works if the people downtown can be made to put it into effect. It does not mean changing. It needs to be enforced. We do not see any need for any change in it.

I guess what I am saying to you is, if it ain't broke, don't fix it, and it does work—it does work when its enforcement is demanded by the courts or by the Congress.

I think we have dealt here in our talk here with you today on the impact of these things on our industry. We have directed our comments on this matter out of necessity. Before we do more, there must be more specific information available to us as to the nature of the concessions made, the substance of the U.S. law that has been traded away. Surely, after 5 years of negotiating and after the President's commitment to enter into the trade agreements, this information can and should be provided. If not, the very absence of this information should be a signal to the Congress that all is not well and that the Congress should go very slowly as it reviews the particulars related to this trade agreement.

Thank you very much, sir.

Senator NELSON. Thank you very much, Mr. Healy.

Mr. Caruso, in reading your testimony this morning, I noted your reference to the Agricultural Sector Advisory Committee and your view that it had not been adequately consulted. The Trade Act of 1974 directs the Special Representative for Trade Negotiations to consult with an Agricultural Sector Advisory Committee with respect to the effect of the trade negotiations on agriulture and to take into account the advisory committee's viewpoints and consultations.

I would like to know how you would describe—you are a member of the Advisory Counsel on Dairy, right?

Mr. CARUSO. Yes.

Senator NELSON. I would like to have you describe what has been the participation of your advisory committee in the dairy sector? Have you been consulted? Have they asked for your viewpoint? Have you been able to get from them the necessary information, and so forth?

Mr. CARUSO. Yes. I do serve on the committee. I served on the committee for a year, Senator Nelson. The Farmers Union, despite the fact that it is the second largest farm organization in this country, was kept off all of the advisory committees by the previous administration and we were only able to obtain seats about a year ago, so I have only been involved with that advisory committee for roughly the last 13 months. My experience with the advisory committee has not been, in my opinion, very positive.

I found, during the five meetings that I attended, that the thrust seemed to be the STR's probing the committee to see where concessions might be made in order to obtain concessions for other countries for other commodities.

We were constantly attempting to get out of the STR staff pertinent information about what the status of the talks were, and that was a difficult process. It was always confidential, that it would compromise the negotiations, even to the point of being pressured to write a report on the negotiations, on the package, before we had the full details.

At a session in January, the committee became quite firm with the STR that we must have the details on the import quota expansions and the subsidies, countervailing codes on these things, before we could write a report to Congress.

I think my experience with the committee last year leads me to believe that its purpose is to give the STR the opportunity to say that they have consulted with the dairy industry during the course of these negotiations and have received our views and comments, which they have, but the end result of the package is completely contrary to the stated positions of the committee.

Senator NELSON. At the time that they adopted the Trade Reform Act, the Special Trade Representative very carefully and repeatedly told the Finance Committee that there would be exchanges—everybody would be kept up-to-date on what was going on in negotiations—that congressional committees would be consulted and items discussed, that the advisory committees would be consulted; and, of course, it is a part of your responsibility, as I understand it, to make a report to the Congress on the extent to which the trade agreements provide reciprocity and equity within the sector, not between sectors. Is that right?

Mr. CARUSO. That is correct. That is my understanding.

Senator NELSON. Then, when is it that you except your committee to make a report?

Mr. CARUSO. Our committee under considerable pressure from STR drafted a preliminary report late in January which I would presume would be sent to the committee through official channels, but it is preliminary because we still do not know the final terms of the agreement. For example, the expansion of import quotas, as I understand it, at least the last official information I have from STR, is we are at a 67-million-pound expansion now but it could go further, perhaps as high as 75 million.

But I would like to attempt to answer the question, do the trade agreements provide for equity and reciprocity within the dairy sector, and the answer is, very honestly, no, they do not. In fact, they are a giant step backward from the dairy farmers point of view. And let me give you my reason. Only 17 percent of the dairy imports—the cheese imports, excuse me—during the 3-year period, 1975 and 1977, came from countries where milk prices are lower than those in the United States.

Senator NELSON. New Zealand and Australia?

Mr. CARUSO. Yes.

Senator NELSON. Where the market price is lower, or the price paid to the farmer is lower, or both?

Mr. CARUSO. Both. Those are the only countries in a purely and freely free trade situation who could compete in the U.S. market. Some 70 percent of our cheese imports during that period came from countries that used export subsidies as an integral part of their domestic dairy program to deal with their surpluses.

When Mr. Healy's organization was successful in the courts in 1974 with the countervailing duty statute, the countervailing duty waiver thing was brought forth. That was necessary in order to facilitate the negotiations.

We were told at that time the purpose of the negotiations was to get a grip on the use of export subsidies, to limit the use of export subsidies because of their discriminating effect on trade. Then it went on for a few years in the hopes it would lead to an agreement that would restrict the use of these unfair trade practices.

Unfortunately, the result of the trade agreements is that export subsidies will be permitted on the whole broad variety of cheese imports into this country, and second, our ability to defend ourselves on these subsidized products or the use of the countervailing duties statute is going to be seriously impaired by the addition of the injury test as well as the fact that even once injury is proved, the countervailing duty will not necessarily have to be equal to the subsidy paid by the exporting nation, as is the case under the current countervailing duty statute.

What the industry faces is increased volume in cheese imports, subsidies on more varieties of cheese than is currently permitted under the waiver arrangement and new obstacles to the application of countervailing duties as a defensive measure.

Senator NELSON. If that is the way the agreement comes out, it is simply a disaster for the dairy industry.

Mr. CARUSO. That is correct.

Mr. HEALY. Just a total disaster. You must understand, Senator, that we went to these agreements—the first thing we were told was of a common agricultural policy which is the glue that holds the Common Market together, is not negotiable. And the second thing that we were told is here is what you have to give us of the U.S. dairy market to effect any agreement at all, and I suspect that our negotiators just sat and took orders.

There is nothing good in this for the dairy farmer of America, absolutely nothing.

Senator NELSON. Can you refresh my memory since it is sometime back, since we have passed the Trade Act, and I have not taken a look at it, does the act require reciprocity, the act itself, and equity within sectors?

Mr. CARUSO. I am not sure that it requires that. Maybe Pat does know. I do understand that it was our responsibility, as members of this committee, to advise on that very question.

Mr. HEALY. I am told, Senator, that there is no definite requirement for reciprocity within the dairy sector, for example, but it was clearly the intent of the Congress of this committee at that time to make certain that any negotiation was not all give on our part and no get.

Senator DOLE. You discussed quotas. I did not hear Mr. Caruso, do you think it is better if we maintained the section 22 status of those quotas, or make it a part of the MTN?

Mr. HEALY. In the first place, section 22, I do not believe, is subject to international negotiation. It is a part of the body of domestic legislation. Section 22 exists solely to make our price support program work. It protects our price support program.

We believe that the quotas should be left alone. We believe that they should have been left alone years ago. For example, when the quotas were first established in 1953, Hawaii had been a traditional market for 700,000 pounds of butter from New Zealand, so a 700,000 pound quota was established and we had no objection to it.

Immediately that quota was filled that year. Foreign countries started sending us butter oil, which had no quota on it. By the time we got that stopped, since there had been a history of imports, butter oil got a quota. They then put a little vanilla in the butter and a little sugar and called it Exalone. When we got that stopped, they had a quota. They then developed Junior Exalone, Jun-Ex, which had less fat in it, more sugar, more water, more vanilla, and by the time we got that stopped, we now have a quota for about 8 million pounds of fat products coming into this country, all of which grew out of subversions and evasions of a 700,000 pound butter quota.

These current quotas that we have have no validity in history and to double them is a ridiculous thing to contemplate.

Senator NELSON. Now, what happens if they proceeded with what you believe to be their proposal, increasing by 67 million pounds? What then happens to the dairy farmer when the 80 percent support price drops to the permanent 75 percent if we cannot continue to get it extended?

Mr. HEALY. We have some legislation before you, Senator, which we hope that you will view favorably to help it not drop to 75 percent.

Senator NELSON. Which legislation?

Mr. HEALY. There is legislation before both Houses to extend this 80 percent minimum.

Senator NELSON. I would think so. The name of it is S. 80.

Senator ROTH. I introduced an H.R. 80 on the House side.

Senator DOLE. There is another one, S. 1, which I introduced.

Senator NELSON. That is the criminal reform act. You had better stay away from that number.

Mr. HEALY. We have high hopes for that legislation.

Senator NELSON. In any event, if the agreement goes through and now you have 67 million or so additional pounds coming in and it is displacing our production, you either have to drive enough farmers or production down far enough to balance the market or at least, for a few years, you end up having to buy it, in order for the foreign goods to cost more to come in.

Mr. HEALY. Two things will happen. In the short run, Secretary Bergland has to buy additional product under the price support program, without question. Over the long-term, because, by his constantly having to buy it, prices will be at support levels. Prices can never rise above supports.

Some farmers cannot exist at support level prices and therefore they will be driven out of the business. So there are going to be three things happening. First of all, Bergland has to buy it; second, we are going to get rid of some farmers; and third, because of the tremendous cost involved in his buying this foreign production, we are going to be hard-put to hold minimum supports at even 75 percent.

So it is an anomalous situation in which the American dairy farmer is being traded off for some nebulous, amorphous good that may result if everything works as the highest hopes expect it to work.

Senator NELSON. The only argument I have heard anybody ever make for that, since we are a lower cost producer than they are, and the idea of free trade is that the most efficient producer is the one who gets into the marketplace, what you really have here if we do not have the support price high enough—and, as you say, you cannot maintain it if it is costing billions—what this trade bill asks is that the most efficient producer of dairy products subsidize, or to pay the cost of the entire program, which it is argued, overall, is in the benefit of the whole United States. In that event, if it is overall going to benefit the United States, but to the damage of the most efficient producer, then the whole United States ought to pay the price and not the dairy producers.

Is that not correct?

Mr. HEALY. We, of course, need the support program. Do not misunderstand that, but we do not like to look to the support program for our price or income. We like to look to the market. We have tailored our production to the demands of the domestic market. We look upon the support price system as a prevention of disaster.

We hope always, and we need always, the effect of the domestic market upon our price to assure us of a reasonable income. Should this trade package, as we understand it, become law, this can never be realized. We are being sold down the river for something that has not fully been explained to us, or to you.

Mr. CARUSO. I would like to add one thing. The U.S. dairy farmer's marketed 119.6 billion pounds of milk in the last marketing year. The commercial market bought 119.3 billion pounds of milk, almost a near perfect balance. The price support program's purpose is to maintain stability in this very volatile industry. This is important to accomplish when dealing with subsidized imports, quota evasions, and yet the dairy farmer takes a lot of heat for that dairy price support program.

Senator NELSON. Senator Moynihan?

Senator MOYNIHAN. New York State is the largest dairy producing State, I suppose. I wonder if I could ask, out of curiosity, if you have a New York representative on the Agricultural Technical Advisory Committee for dairy?

Mr. HEALY. Oh, yes. Dick Redmond, who is associated with Dairylea Cooperative. In my organization we have five people on that committee who have, by the way, experienced the same thing that Mr. Caruso outlined to you.

Senator MOYNIHAN. This increase in the import quotas of 67 million pounds——

Mr. HEALY. That is 67 million pounds over 1977 landings. The critical numbers are, in metric tons, 57,000 tons of quota currently. In 1977, landings, 79,000 tons. New quota landings, 110,000 tons. The 1977 landings in excess of the quotas is the pricebreak system which says that if certain cheeses are landed at 7 cents above the support level, they can come in beyond the quotas, a system with which I disagree. When it was announced to me, I started screaming about it and have not quit. That does not do a lot of good, always.

Senator MOYNIHAN. I know Senator Javits and I are going to be interested in how this developes. We are not just a milk producing State, but we are a cheese-producing State.

Does the Senator from Wisconsin happen to know that Philadelphia cream cheese originated in South Edmonston, N.Y.?

Senator NELSON. Yes, sir, and I have eaten it. If I were you, I would not put my name on it.

Senator MOYNIHAN. I am told Kennedys used to have a saying, "Don't get mad, get even."

Senator NELSON. You have some marvellous cheddar cheeses—natural, not that cream stuff.

Senator MOYNIHAN. If we may, I think Senator Javits and I would like to submit some questions to you, to which we would be very grateful to receive answers.

Mr. HEALY. Yes, indeed. We are in town, Senator.

Senator NELSON. Just let me say that I am very concerned about your testimony, which I interpret to mean that you and your committees are not being genuinely consulted in these negotiations. Is that a fair statement?

Mr. HEALY. Senator Nelson, when the Dairy ATAC Committee was called to write its report, it was called to write its report first upon this international dairy arrangement, a meaningless thing, a thing in which the United States has no interest.

Some of the people on the committee insisted that they be allowed to address themselves to other issues, and reluctantly it was agreed that they could.

I have had three private hour-and-a-half sessions with Ambassador Strauss to no avail. They do not want to listen. They have agreed to these things, and you as a committee, and you as a Senate will, at some point, be given a package to approve or disapprove in 60 working days and the pressures will be great indeed.

What we do not see, in what we have been told, is where the United States is going to benefit from this thing. All we see is that we, as dairy farmers, are going to be asked to contribute to the development of a package.

I think the negotiator's one compelling force was to come home with a package and they did what they had to to develop one.

Senator DOLE. They always do it at the expense of agriculture.

Mr. HEALY. I do not understand that, Senator Dole when our first requirement beyond defense and beyond everything else is to be able to feed ourselves. That comes first.

We, as a nation, do it very well. We feed ourselves better and cheaper than any other people on Earth. We do it today cheaper than it has been ever done heretofore, and I am happy to say that there has been much talk about productivity, because the productivity of the American dairy farmer, the dairy industry, leads that parade.

Senator DOLE. I think there is probably recognition. I do not address the criticism just to this administration, but there is not as much farm clout around here any more. If you are going to deal out somebody, you are going to deal out the weaker groups, and we need to enlist the aid of our urban brethren in responsible efforts to protect our domestic food suppliers.

And I remember—I did not have a chance to read all your testimony—I remember in an earlier administration there was the so-called Flanigan report that you touched on. I remember the fun that Hubert Humphrey used to have, talking about the Flanigan report. I assume that man, if there was in fact a man, is still around.

Mr. HEALY. Flanigan is much maligned for that thing. That was a report to Flanigan, but the people who wrote that report are still in the same positions that they held when they wrote it, so that attiude still prevails.

It just so happened that I was the one who uncovered that report and gave it to Senator Humphrey. I made much use of his name, Flanigan's name, but he was the recipient, not the author. The authors are still in place.

Senator DOLE. Still writing the Flanigan report?

Mr. HEALY. Apparently writing the trade negotiations today.

Mr. CARUSO. It is important to note that while the philosophy of Flanigan's plan seems to have been continued, the concessions made in terms of the import quotas, but you do not go anywhere nearly as far as was contemplated in that initial report. They were talking about dislocating half the dairy farmers in the upper Midwest at one point, in order to export more grain.

As I understand it, the Europeans were not willing to take that grain, and therefore our dairy farmers, we are not going to lose so many.

Mr. HEALY. We have, perhaps, the most efficient dairy system in the world. We get about 11,500 pounds per animal. In Europe, they get somewhere between 7,500 and 8,000 pounds. The theory is to export American grain, run it through that inefficient machine and then send it back to us. We can do it better for ourselves.

Senator DOLE. I agree with that. I really appreciate the testimony. I am not so surprised that the advisory committees are not listened to. I do not know of any who have been recently. Even Congress is not listened to. We write in the law that we should be consulted, the most recent example being Taiwan. We had a resolution there that passed 94–0, but we were not consulted, so I guess maybe it is up and down the line.

I would hope that maybe in the new implementing legislation that we provide for the private sector's advisers to be members of the U.S. delegation to any committees that we might establish. Would you agree that we still work on the premise that you have that input?

Mr. CARUSO. I think that is particularly important with respect to the new international dairy arrangement which will provide for these consultative bodies, that there be dairy representatives, people who really understand the inside of the industry rather than just government officials.

Senator MOYNIHAN. If I might say, I thought the Senator from Kansas made a very sensitive and correct remark of the direct influence of farmers in the Senate and the Congress and we do need friends from cities who understand this matter. I would like not only to agree with him, but point out to him that I think the Senator from New York is the only dairy farmer now sitting on the Finance Committee.

Mr. HEALY. You had better be careful. Maybe you are one of the 1,200 or 1,500 who are going to be shaken out of this thing.

Senator MOYNIHAN. There are some who have said we already have been.

I want you to know you have an advocate over here.

Senator DOLE. That is very helpful. That is why I did not discuss it at any length. I knew you were on our side.

Senator MOYNIHAN. As a matter of fact, I am.

Senator NELSON. Thank you, gentlemen.

[The prepared statement of Mr. Healy follows:]

STATEMENT OF PATRICK B. HEALY, SECRETARY, NATIONAL MILK PRODUCERS FEDERATION

The National Milk Producers Federation is a national farm commodity organization representing dairy farmers and the cooperative dairy marketing associations they own and operate throughout the United States. Since its founding in 1916, the Federation has worked toward the development of legislation and government programs which will provide the basis for a national food policy. This includes the assurances needed by producers to make the commitment necessary to bring forth the product demanded by the consumer and the stability of market essential to a strong agriculture.

Among the major issues the Federation has concerned itself with is the maintenance of effective limitations on the import of dairy products into this market. In the absence of such limitations, this market would quickly become the dumping ground for world dairy surplus. Such a situation would render totally inffective the marketing programs farmers have developed through their investment in and commitment to cooperatives. It would negate the effectiveness of the dairy price support program which the Congress has enacted as a means of assuring the domestic production of adequate milk and milk products to meet present and anticipated future demand. It would, ultimately, result in consumer reliance on more costly imported products for a basic element of the national food supply.

Since the earliest discussions of the Nixon Round of multilateral trade negotiations, the dairy farmers of this nation have been gravely concerned that the outcome would mean significant damage to their industry. Other major dairy producing nations have long argued that the import limitations maintained by the United States are a trade barrier of the most noxious type. There are those in this country—in our own government—who are all too willing to accept this argument either on the basis of misplaced philosophical attitudes or simply for the purpose of making a "deal."

The so-called Flanigan Report which emerged in 1972 set forth a negotiating strategy which used the U.S. dairy industry as the bargaining chip to gain concessions in other areas. While that report has been repudiated as the basis of policy by this and previous administrations and it has been shown to be totally devoid of any legitimacy on an economic or any other basis, the little we have been able to learn of the results of the negotiations indicates that the Flanigan philosophy has, indeed, been implemented.

The dairy industry is a major element of the nation's agriculture. In 1978, the sale of milk and cream yielded $12.5 billion in farm income, making it the second leading source of cash income on the nation's farms. When one considers the value of livestock sold off dairy farms either as beef, veal or as a breeding stock, the total assumes even greater proportions.

In recognition of the central role of dairying, both on the farm and as an essential element of nutrition, several basic programs have been established to assure adequate supplies of milk and milk products from domestic production. While the Federation and its membership is concerned with a wide range of policy issues, there are five primary areas which are deemed basic to the dairy industry. These include:

(1) The dairy cooperative marketing association and the laws providing authority for farmers to join together for the joint marketing of their production;

(2) The dairy price support program which provides a minimum degree of price assurance to the dairy farmer so as to bring about the milk production demanded in this market;

(3) The Federal milk market order program authorized by the Agricultural Marketing Agreement Act which provides structure to the major milk markets of the nation;

(4) The system of import restraints which permits the basic government programs and the marketing efforts of farmers to function effectively; and

(5) The combination of local, state and Federal regulations which assure the integrity, safety and wholesomeness of the milk and dairy products offered in our markets.

Each of these policy elements is an essential part of the fabric that has permitted the American dairy industry to develop as a highly efficient, modern operation capable of meeting the demands of a highly complex and changing market. The individual elements of this policy are interdependent. Disruption or misapplication of one element can and does have serious implications in other areas. While the basis of the comments presented in our statement will be toward the effect of imported dairy products on this market, we will make numerous references to the effect of such actions on other policy areas.

A central factor in the marketing of milk in the United States is the cooperative marketing association owned and operated by the dairy farmer. Most of the nation's milk is marketed through one of the 500 dairy cooperative associations farmers have organized and developed under the authority of the Capper-Volstead Act of 1922.

Cooperative marketing represents the effort of the individual farmer to exert some control over his product after it leaves the farm. It is a self-help effort aimed at assuring him a market and providing him the best possible return for his product. The development of this marketing system has not been easy. It has not been automatic. It represents the commitment on the part of hundreds of thousands of individual businessmen and women—dairy farmers—to a joint effort. Their investment in time and money has been toward the development of marketing organizations that can and do meet the demands of the most complex agricultural marketing task this nation faces.

Consider the problem of marketing a bulky, highly perishable product that is produced by 200,000 or more farmers in every part of the nation every day. This required the assembly, on a daily average, of more than 330 million pounds of product. It means the transport of this to processing plants. The product must be processed quickly to preserve its quality. And the processing must result in a wide variety of products ranging from fluid milk to butter and nonfat milk demanded by the consumers.

Cooperative operations participate in this process in varying degrees. Some assemble bulk fluid milk from their members' farms and sell it to bottling plants and other processors. Some maintain a full range of processing capacity of their own. The bulk of the butter and nonfat drymilk produced in the United States is through cooperatively owned plants. A high percentage of United States' natural cheese production flows from cooperative plants.

Because of their basic position in the marketing of milk, any actions which have substantial effect on the domestic market for milk and dairy products are felt most acutely by the dairy cooperative marketing association. The ultimate impact, of course, is on the dairy farmer himself, but the impact in such a case becomes a double burden for the cooperative member as he is called on to carry the load both as a producer and as a member of the cooperative which has the basic responsibility in our marketing system for maintenance of market balance and stability.

The dairy price support program authorized by the Agricultural Act of 1949 provides a minimum degree of price assurance so as to induce the domestic production of adequate supplies of milk to meet the needs of this market. This is accomplished through a system under which the Commodity Credit Corporation stands ready to purchase any butter, nonfat dry milk, and Cheddar cheese of stated qualities offered to it at previously announced prices. These purchase prices are intended to be sufficient to permit the processing plant to meet its costs and return at least the announced price support level to the farmer.

It has long been recognized that the ability of the United States to develop and maintain domestic agricultural programs such as the dairy price support program would be seriously undermined if this market could be used as a dumping ground for surplus production of other nations. As a result, Section 22 of the Agricultural Adjustment Act was approved in 1935 to provide the basis for increased tariffs or import quotas on agricultural imports which interfere with or threaten to interfere with the effective operation of a domestic price support or similar program.

Even before this, however, Congress has enacted the Countervailing Duty Statute which was designed to prevent injury to domestic industry by the export subsidy programs of other nations. Simply put, this law requires the Secretary of the Treasury to collect an additional duty, equal to any bounty, grant, or subsidy, on any product which enters the United States with the assistance of such bounty, grant or subsidy. This statute is simple and straightforward in its expression. It is mandatory in its application.

The first import restraints under Section 22 were established in 1953. Prior to that, limitations had been maintained under other authorities, including the War Powers Act. Since 1953, a fairly comprehensive system of import restraints have been developed, not because of the growing degree of protectionism sought by the industry, but because of the ingenuity of exporting nations in exploiting loopholes in established quotas or in developing products which would successfully evade those limitations.

The present quota system covers the so-called fat products such as butter and butter-oil, dried milk products and cheeses. In the case of cheese, there are quotas on Blue Mold, Cheddar, Other American, Edam and Gouda, and Italian cheeses. In addition, a "pricebreak" quota system has been established for Swiss and Gruyere-Process cheeses and two basket categories of cheese. Under the "pricebreak", imports are subject to quota if valued at less than the Commodity Credit Corporation purchase price for Cheddar cheese plus seven cents (currently $1.13 per pound). Imports of cheese in these tariff classifications valued over this level are nonquota. Current quota levels are shown in the attached table expressed in both metric tons and thousands of pounds.

A point which cannot be emphasized too strong is that Section 22 and the import restraints imposed under its authority are basic elements of domestic food policy. The sole basis for action under Section 22 is the impact imports have on the operation of a domestic price support or similar program. In the absence of such impact, there is no authority to limit imports. On the other hand, in the absence of the authority of Section 22, price support programs of the United States could quickly become support programs for the world market. Such a situation would greatly increase government costs of the programs and, inevitably raise cries for their termination due to these costs.

On January 4, 1979, President Carter informed the Congress of his intent to enter into a number of trade agreements resulting from the five years of talks under the Nixon Round of multilateral trade negotiations. The information concerning the agreements which accompanied this notification was sketchy at best. In many cases, the negotiations were, and still are, in progress. The President did not and does not know the exact nature of the agreements he has said he will sign.

Nevertheless, Congress will soon be faced with the task of judging the result of these negotiations and approving or disapproving a massive package of implementing legislation that will amount to approval of the agreements themselves. These agreements will have profound effects on American industry and agriculture. Much has been said of the value of these agreements. It should be noted, however, that all of this has been in general, nonspecific terms. In the case of agriculture, it is said that gains in terms of $3 billion worth of agricultural exports are involved. But one must be extremely cautious and searching in accepting such claims. The $3 billion represents the 1977 export value of farm commodities on which concessions of some sort have been granted by the various nations. We do not know the value of the concessions gained. We do not even know their nature. There is, in fact, no way in which an informed judgment can be made on these concessions at this time.

On the other hand, the dairy industry is becoming fully aware of the price being exacted from it for the United States' presence at the negotiating table.

The dairy industry will be affected by three specific actions taken as part of these talks: (1) An expansion of cheese imports; (2) The nullification of the countervailing duty statute by the specific recognition of the right of exporting nations to employ export subsidies and the addition of an injury test to the U.S. countervailing duty statute; and (3) An international dairy arrangement.

As the U.S. approached these talks, the key phrase in addressing Congress and industry was "free trade." Great things were promised in terms of export expansion, market access, resolution of the balance of payments problems and other gains by embarking on a new era of "free trade" which would result as other nations reduced the barriers erected against U.S. products.

Today, the key phrase is "fair trade." A subtle difference perhaps, but seemingly one that admits the negotiations have fallen far short of announced goals. While the same claims in terms of trade expansion, market access and other gains may be made, the very unwillingness to discuss specifics on the part of those responsible for the trade talks should be signal enough that they have failed to achieve announced objectives.

Based on information presently available, the trade talks will mean an expansion of cheese imports of 67 million pounds over 1977 levels. This represents an increase of one-third, with most of the additional product entering this market with the assistance of substantial export subsidies. At the present time, cheese import quotas total 127,789,600 pounds. These imports, plus shipments of nonquota varieties resulted in total imports in 1977 of 209.4 million pounds.

It is proposed that the expansion of imports be accompanied by an expansion of coverage of the section 22 quotas to incude all cheeses other than sheep and goat's milk varieties and the soft cured cheeses such as camembert and brie.

In support of this package, three basic arguments are advanced: (1) The expansion of coverage places a cap on cheese imports so that a known level is being dealt with; (2) Under the present structure, imports of nonquota cheese above the "pricebreak" have been expanding and total imports by the mid-1980's would be as high or higher than if the proposed package is put in place; and (3) Cheese consumption and production in the United States has been expanding and the increased level of imports can easily be absorbed without serious disruption to the industry.

Each of these arguments has basic flaws.

Experience has shown that each new quota level has simply been a new, higher plateau from which to work. In other words, the quotas always rise, they never go down. Illustrative of this is the situation with the pricebreak quotas which were originally established in 1968. In 1972, the pricebreak system was reworked and the quotas "adjusted." These "adjustments" resulted in a 378 percent increase in Swiss cheese quotas, a 242 percent increase for Gruyere-process cheese, and a 62 percent increase in the Other, NSPF category.

In the case of Cheddar cheese, the original quota was set in 1953. In 1966, the quota was raised by 33 percent and in 1967 it was increased again by 261 percent.

In addition to these specific increases, new quota categories have been created to award the ability of exporters to evade established quotas with a share of this market. The quota on Italian cheese not in original loaves resulted when exporters found they could evade the established quota on hard Italian cheese varieties by the simple expedient of cutting the loaves. The great expansion of Swiss imports in the mid-1960's came when the low grade "grinders" Swiss was imported for use in processed cheese products.

The entire system of import restraints on dairy product exhibits such actions. Thus, there is an abundance of historical evidence to support the concern that the new level of imports will be the "cap" only until a new evasion product is developed. Technology and imagination are the only limiting factors in this area and experience has proven there is an abundance of both available.

To argue that the proposed system will actually mean a lower level of imports in the future than under the present structure, one must assume there is an unlimited market for the cheese varieties presently admitted outside of quota. The fact is that these cheeses could come in now if the market would bear the additional quantities. Actually, the level of these imports is more directly related to the strength of the U.S. cheese market than the fact that they can enter without limitation. These imports rise during periods of strong cheese prices in the United States and tend to be stable or even decline on a low market.

This partially explains the expansion of these imports during 1978 when U.S. cheese prices were rising as demand expanded. If one were to apply the same logic to the 1977 import levels, the conclusion would be that this market was shrinking as the level of nonquota imports declined relative to 1976.

Arguing that the U.S. industry can easily absorb the additional imports fails to take consideration of the question back to its basic point of impact—the farm. While cheese consumption has expanded sharply in recent years, this expansion has generally been met by shifting milk from other products where consumption has declined. The fact of the matter, regardless of how it is addressed, is that less milk will be needed off U.S. farms in order to make room in this market for the additional products of European dairy farmers.

Some data has been circulated by the administration arguing that this additional import level would result in minimal price reductions at the farm—an estimated 3.5 cents per hundredweight of milk even if the entire increase were put in effect in one action. This is based on a doctoral thesis done at Michigan State University and published late last year. We have not had an opportunity to assess the thesis, but it apparently is based entirely on an examination of the cheese market. In 1974, a USDA study of the same type examined the effect of imports on U.S. milk prices, but approached the question from the broader standpoint of the market for all manufactured products and the resulting impact on farm milk prices. Since the milk used to produce cheese is equally usable in the production of other products, this is the only valid approach to such a measurement. An updating of the USDA study results in a price impact on the farm of 21 cents per hundredweight for each 500 million pounds of milk equivalent (fat basis) of imports.

1977 imports totaled 1,968 million pounds of milk equivalent (fat basis). The cheese import expansion would add 670 million pounds milk equivalent to that. Measuring the impact on farm income on the basis of the USDA research, yields a $343 million negative impact for the expansion alone and an impact of over $1.35 billion for total imports under the level proposed as the result of the trade talks.

The additional imports will displace domestic milk production that would otherwise move into cheese output. This displacement, in the short run, will be accommodated by additional Commodity Credit Corporation purchases of dairy products under the price support program. To accommodate the full extent of the increased imports would add $75 million to CCC costs.

In the longer term, the accommodation must be made on the farm through shrinkage of milk production. The equivalent of 670 million pounds of milk represents the output of more than 60,000 average dairy cows at 1978 production levels. This would be the same as putting more than 1,200 dairy farms with 50 cow herds out of business.

An integral part of the trade negotiations is the development of a subsidies code which will occasion major changes in the U.S. countervailing duty statute. This code seeks to ban the use of export subsidies on non-primary goods and primary minerals. This will be done, according to available information, by providing an illustrative listing of prescribed subsidy practices and through a tighter definition of subsidies. In the area of agriculture, subsidies would be permitted, but the code seeks to establish "discipline" in their use which would bar price undercutting by subsidization and permit retaliation for the use of subsidies to invade third country markets. Further, it is promised that expedited procedures under the revised countervailing duty statute would make it easier to obtain relief.

In exchange for these "concessions", the United States has agreed to amend its countervailing duty statute to require proof of injury before acting.

With specific regard to dairy product imports, it has been agreed that subsidization of exports to the U.S. would be permissible so long as such subsidies did not "undercut" domestic prices. It is unclear who would make such a determination or how it would be made. Trade negotiators have suggested that major reliance would be placed on exporting nations tailoring their programs so as to avoid price undercutting. In doing this, exporters would "monitor" the U.S. market to determine how much subsidy they could use. It is a fact that dairy products currently entering this market from Europe do so with substantial subsidy aid. Without such assistance, European exports to the United States would virtually cease. Therefore, the change in the countervailing duty statute merely permits continued shipment of subsidized product to this country.

The addition of an injury test to the statute reverses the intent of Congress. This law has always been a means of preventing injury to domestic injury due to the export subsidy programs of other nations. With an injury test, it becomes a statute which permits, even requires, injury.

It has been argued that the injury test to be employed under countervail would be "soft" and that injury could easily be proven. Such assurances are counter to the experience the dairy industry has had in obtaining enforcement of the present, mandatory law. They fly in the face of the experience of other industries that have sought relief under the Antidumping Statute or in obtaining relief under other laws from unfair trade practices or import competition generally. The United States has, frankly, been extremely reluctant to provide domestic industry of any type with the full protection of these laws.

Adding an injury test to the countervailing duty statute creates a situation under which a subjective judgment must be made regarding the occurrence of injury. It would be a simple matter for that judgment to be in the negative, at which point the domestic industry is without recourse irrespective of damage.

Arguments that changes in procedures involved in administering the statute will make it more effective and speed action are unconvincing. First, none of the changes—expedited handling, provisional relief—are precluded under present law. The law does not require Treasury to take 12 months to reach a decision, it requires that one be reached in a 12-month period. The law does not bar the suspension of liquidation of duties in a case under investigation. It just has not been done.

These changes could be made now, in all probability without further action by Congress. They do not constitute sound arguments for negating the effect of the statute. A countervailing duty statute with an injury requirement will, with the speed-up procedures suggested, simply be a faster means of saying "no" in situations that require the imposition of countervailing duties at present.

For the dairy industry, the presence of the dairy price support program virtually precludes the possibility of proving injury as CCC will make product purchases sufficient to maintain a price level determined by the Secretary of Agriculture to be sufficient to produce an adequate supply of milk. Earlier, in discussions with U.S. trade negotiators, it was suggested that "interference with a domestic price support or similar program" would be one of the bases for proving injury. It is our understanding that such a provision is objected to by other nations and is not included in the draft subsidies code. Even if it were, the problem of proving interference would be just slightly less than establishing injury itself.

A final feature of the trade package concerning the dairy industry is an International Dairy Arrangement. This takes the form of a commodity agreement that essentially provides for the exchange of information on production, consumption, prices, stocks, and even trade in dairy products by signatory nations. It also requires consultation between signatories to review the world dairy situation and to identify remedies for market imbalances for consideration by member countries.

Both USDA and STR have consistently denied that the agreement, in any way, would impinge on the U.S. ability to determine its own dairy policy—including price support levels, Section 22 quota actions or other moves.

As protocols to the arrangement, minimum pricing agreements are provided for certain basic milk products. These establish a minimum price for nonfat dry milk at 19.3 cents per pound, butter at 42 cents per pound, and cheese at 36.3 cents per pound.

In each instance, the minimum price level is substantially below a realistic commercial price for the product. In the United States, for instance, the CCC purchase prices for product under the dairy price support program are as follows: nonfat dry milk, 73.75 cents; butter (New York), $1.1350; and cheese, $1.06 per pound. Since U.S. price levels are at least competitive with nations other than New Zealand, the minimum prices in the agreement represent nothing more than an agreement not to subsidize exports below that level.

As indicated, the full results of this negotiation are not known. Although the President has already informed Congress of his intent to enter into the agreements, negotiations are still underway and the results will not be known for some time.

Based on what we have been able to learn of the agreements, however, the National Milk Producers Federation has made a careful analysis of the impact this would have on the domestic dairy industry—specifically on the dairy farmer and his cooperative marketing association. The impact is negative. Because of this, the voting delegates at the Federation's annual convention late last year unanimously opposed any trade agreement which would expand dairy product imports, relegate the countervailing duty statute to a dead letter through the addition of an injury test, and expressed opposition to any package of trade agreements or legislation of which these items were a part. Two weeks ago, the Executive Committee of the Federation again reviewed these questions and again unanimously expressed their opposition to these moves.

We are fully aware that other nations have long argued that the import limitations maintained on dairy products by the U.S. are most objectionable. The fact is that the United States has the most open market of any major dairy producing country in the world. Other countries simply don't allow imports unless the product is needed in their market.

Even while we are granting expanded access to this market, the U.S. government is ignoring the problem of casein and caseinate imports and the effect this is having on the dairy price support program.

Historically, casein—essentially, milk protein—has been used for a variety of industrial applications including paint, plastics, adhesives and paper coatings. As technologies have changed and price relationships shifted, that market has been lost to a variety of synthetic products. However, this loss has been more than made up for in the use of casein and caseinates in a growing variety of food and feed products, generally as a replacement for nonfat milk solids.

There is attached to this statement a copy of a petition the Federation addressed to Secretary of Agriculture Bergland a year ago requesting the establishment of a Section 22 quota on these products when imported for food and feed use. To date, the only response of the Department of Agriculture has been that there is no problem or if there is, it is not due to casein imports.

We have renewed this request because it is essential as part of the effort to maintain the dairy price support program. It is impossible for dairy farmers to understand how their government can so lightly treat such basic issues. On the one hand we are confronted with the justified concerns over government costs and, on the other we witness the refusal to take actions which will not only reduce government costs, but improve farm income as well.

We are aware that our discussion of the trade agreements as they affect the dairy industry have dealt with the impact on the industry rather than with specific recommendations for the implementing legislation the Congress must consider.

We have directed our comments in this manner out of necessity. The truth is that we are not aware of the specific proposals or changes that will be necessary. We have not been informed of the specific details of the agreements. We know only the broad outlines and the impact they will have. To translate this general knowledge into specific legislative language would be premature.

Before that can be done, there must be more specific information available as to the nature of the concessions made, the substance of the U.S. law that has been traded away, about the gains forthcoming for the United States.

Surely after five years, of negotiating effort and after the President's commitment to enter into the trade agreements this information can be provided. If not, the very absence of this information should be a signal to the Congress that all is not well and that the Congress should go slow in reviewing any particulars related to these trade agreements.

In the coming weeks, much will be made of the broad nature of the consultations that went on between industry and government in the preparation for and the conduct of these trade talks. Congress did, in fact, intend that such consultations take place and that they be serious in nature. We cannot comment on other commodities or other sectors, but in the case of dairy, little, if any, serious consideration was given to the advice received from the advisory committees. Further, it is our understanding that those expert in the dairy area have been precluded from commenting on the major provisions of the negotiations as they affect the dairy industry as their views do not coincide with those of the trade negotiators.

The dairy industry is fully aware of the importance of international trade to the U.S. economy in general and to major segments of agriculture specifically. We do not feel, however, that a case can be made for the sacrifice of a significant segment of the dairy industry in exchange for some hoped for gain in other areas.

It is understood that the following is the expansion of cheese import quotas offered by the United States. The data are presented in both metric tons and thousands of pounds.

Type of cheese	Current quota		1977 imports		Offered by United States	
	Metric ton	1,000 lb.	Metric ton	1,000 lb.	Metric ton	1,000 lb.
Blue mold	2,276	5,017.0	1,569	3,354	2,500	5,511.5
Cheddar	4,552	10,037.5	4,203	9,337	5,595	12,334.7
Other American	2,766	6,096.6	2,701	6,407	3,480	7,672.0
Edam and gouda natural	4,174	9,200.4	3,293	8,251	5,680	12,522.1
Edam and gouda processed	1,429	3,151.0	477	1,064	1,429	3,150.4
Italian, original loaves	5,216	11,500.1	4,310	9,803	5,966	13,152.6
Italian, not original loaves	677	1,494.0	595	1,343	777	1,713.0
Swiss [1]	9,260	20,420.0	[2] 27,150	59,627	30,871	68,058.2
Gruyere-process [1]	5,099	11,242.0	[2] 7,492	15,280	8,052	17,751.4
Other, NSPF [1]	18,474	40,730.0	[2] 25,109	55,355	39,776	87,690.1
Other, lowfat [1]	4,037	8,901.0	3,014	6,645	6,207	13,684.0
Total	57,960	127,789.6	79,913	176,466	110,333	243,240.0

[1] Pricebreak categories.
[2] 1977 import levels include nonquota imports at "above price break levels."

In addition to the above, there would be imports of sheep and goat's milk cheeses which in 1977 totalled 11,275 metric tons or 24,856,865 pounds. Also, soft cured cheeses such as Brie and Cammembert will not be covered under quota. Imports of these in 1977 totalled 3,100 metric tons or 6,834,260 pounds. Inclusion of these items would bring total cheese imports at the new level to 274,931,255 pounds.

NATIONAL MILK PRODUCERS FEDERATION,
Washington, D.C., May 10, 1978.

Hon. BOB BERGLAND,
Secretary, U.S. Department of Agriculture,
Washington, D.C.

DEAR MR. SECRETARY: The National Milk Producers Federation, on behalf of its member dairy cooperative marketing associations and their dairy farmer members, urges immediate action by the U.S. Department of Agriculture toward establishment of a zero level quota under the authority of Section 22 of the Agricultural Adjustment Act on imports of casein and mixtures of casein, classified as Items 493.15 and 493.16 respectively, under the Tariff Schedules of the United States (TSUS) when such products are imported for use in human food or animal feed.

Except for a limited class of mixtures of casein provided for under TSUS 950.19, these products are not presently subject to any import limitation. This omission of a major category of imports from coverage under Section 22 has stemmed from the historical use pattern of the product. This use pattern has changed substantially in recent years however. There is presently no question that these articles are being imported into the United States under such conditions and in such quantities as to render or tend to render ineffective or materially interfere with the operation of the dairy price support program.

CASEIN UTILIZATION

Information on the use of casein in the United States is limited. In the past, it has had broad application in a variety of industrial uses including paper coatings, adhesives, plastics, paints and synthetic fiber production. With the development of synthetic materials and the increased cost of casein, many of these uses have been lost or substantially reduced. As these have declined, use in human food and animal feed has increased.

The major use in animal feed is in milk replacer products for calf and pig feeding. In this instance, casein has largely replaced domestically produced nonfat milk solids.

The greatest expansion has taken place in food uses. A 1977 study by USDA's Economic Research Service estimated that 36 percent of the casein imported into the United States in 1976 entered food use. Major food uses of casein and its products include coffee, whiteners, whipped toppings, whipping powders, imitation milk and cheese, instant breakfasts, cereals and baby foods. They are also found as binders in sausages, weiners, and luncheon meats and as protein supplements in bakery products, frozen desserts, soups and dietary foods.

Table 1 provides a tabulation of estimates of casein and caseinate use in the United States for selected years from 1940 to 1976. This clearly indicates the dramatic shift that has taken place from 1940, when food and feed uses were of such insignificance that they could be categorized under "Other," to 1976 when they presented 71 percent of the total.

LEVEL OF IMPORTS

Casein imports in recent years had been relatively stable in the range of 100 to 135 million pounds. An exception was 1975, when imports fell to 58.4 million pounds. Shipments rebounded to 112.1 million pounds in 1976, however, and reached a record of 144.2 million in 1977. Table 2 details U.S. production and imports of casein.

Many sources indicated that the increased imports in 1977 were due to trade anticipation of final action by the Food and Drug Administration on amendments to the standards of identity for frozen desserts which would have allowed the use of caseinates as a substitute for whole milk solids-not-fat in ice cream. This proposal was withdrawn late in the year, and FDA has announced that existing standards will continue in effect pending a decision on a public hearing. While anticipation of the FDA changes might have had some influence, current import levels clearly indicate other factors are involved. For the first three months of 1978, imports are 125 percent of the level of January, February and March, 1977 and 175 percent of the comparable period for 1976.

It has been suggested that a major reason for the increase in imports is the current resurgence in the U.S. economy, particularly homebuilding and the increased use of casein in adhesives. There is little evidence to support such an hypotheses. This would be a reversal of a 20-year trend that began with the development of synthetic materials. Further, the advancing price of casein in the last year would only serve to make substiute materials more attractive.

Weekly market reports issued by USDA indicate a continuing strong demand for casein and caseinates in the world market. Over the past four months, repeated references are made to tight supplies, current production being devoted to meeting contractual obligations and further anticipated price increases. This does not indicate a lessening of the rate of imports in the months ahead.

DISPLACEMENT OF DOMESTIC PRODUCT

The primary food and feed uses for these imports results in the displacement of domestic agricultural products, notably nonfat dry milk. This displacement results in increased purchases of nonfat dry milk by the Commodity Credit Corporation in order to effectuate the dairy price support program. A review of nonfat dry milk production, utilization, CCC purchases and estimated displacement is presented in Table 3.

Presently, the Commodity Credit Corporation is making substantial purchases of nonfat dry milk under the dairy price support program despite the fact that domestic production of the commodity is only about one-half what it was 15 years ago.

The consumption decline has been almost continuous over the last ten years. The apparent increase in 1973 must be discontinued due to the accounting of imports which places such products in domestic commercial consumption as soon as they are landed. There were substantial import expansions during 1973. However, a survey by the International Trade Commission in September of that year indicated that a substantial portion of the imported product had not been moved into consumption channels (TC Publication 616, October 1973, page 10).

The consumption decline for nonfat dry milk is due, at least in part, to the expanded food use of caseinates in a wide variety of products. As reported by the Economic Research Service of USDA in its Staff Report on Casein (April 20, 1977), "Much of the increase in the use of casein in food and feed products is due to the fact it is a low cost protein substitute for nonfat dry milk."

This substitution leads directly to added purchases of nonfat dry milk by the Commodity Credit Corporation. The product displaced by imported casein, lacking an alternative market, is directed to CCC under the dairy price support program. This increases the cost of the price support program. More importantly, it interferes with the achievement of the purposes of the price support program.

ADDED COST UNDER PRICE SUPPORT PROGRAM

One hundred pounds of liquid skim milk yields 9.2 pounds of nonfat dry milk or about three pounds of dried casein. If the bulk of the displacement is on the basis of achieving a similar protein content, one pound of casein will replace 2.9 pounds of nonfat dry milk or its equivalent in milk solids-not-fat. Thus, for 1976 when USDA estimates that 79.6 million pounds of casein and caseinates went into food and feed uses, the displacement would have totaled 230.8 million pounds.

As indicated, these imports expanded significantly in 1977. The record levels reached during the year continue to be exceeded as monthly data for 1978 become available. One can assume the industrial use during 1977 was no higher than the 32.5 million pounds for 1976. The sustained decline in these uses in past years alone would support this view.

The increased import levels during 1977, with 32.5 million pounds going to industrial uses and the 111.7 million pound balance being used for food and feed, would mean displacement of 323.9 million pounds of nonfat dry milk or its equivalent. The cost of displacement on the 1977 scale, using the current 71 cents per pound CCC purchase price for nonfat dry milk is $230 million in purchase costs alone. Table 4 presents a review of the costs added to the price support program in recent years due to these imports.

APPLICABILITY OF SECTION 22

It has been argued that the application of Section 22 to these products may not be appropriate since there is little, if any, commercial casein production in the United States. The statute makes no requirement regarding domestic production of the specific commodity. It directs itself to ". . . any article or articles are being imported or are practically certain to be imported into the United States under such conditions and in such quantities as to render or tend to render ineffective, or materially interfere with, any program or operation undertaken under this chapter * * *".

The test that must be met is the existing or potential impact of the imports on a domestic price support or similar program. Section 22 was approved by the Congress in order to provide a means of assuring the effective operation of domestic price support programs. In this sense, it is a shield behind which these programs can operate. Without it, the United States would be faced with the prospect of attempting to stabilize agricultural prices for the world as this market became a dumping ground. Recent studies by the U.S. Department of Agriculture have recognized the essential nature of this with regard to the dairy price support program by pointing out that the price support program could not be maintained in the absence of effective import limitations under Section 22.

In this regard, Section 22 is a basic element of domestic agricultural policy. Its aim or intent is to permit the development and operation of effective domestic price stabilization programs. It does provide means of recognizing legitimate markets for imported products in this country. At the same time, however, it is the simplest and most straightforward means of effectuating necessary import limitations. Its effective use cannot be ignored in the continuing effort to maintain a sound dairy price support program.

A further point raised against application of Section 22 in this instance is that these products are classified as chemicals under the Tariff Schedules of the United States. Again, the statute imposes no requirement as to tariff classification or description of the product.

An argument has been made that enforcement of limitations under Section 22 would be difficult since casein for industrial uses is basically indistinguishable from that entering food and feed uses. Since industrial use imports would continue to enter outside of quota, we recognize the need to establish some basis of enforcement. The industrial use provision would be in the nature of an exemption. A system of certification should be adopted whereby importers and users would certify that the end use was indeed an industrial application. Another possible means would be to require imported casein to be denatured in some manner so as to render it unfit for human or animal consumption.

INDUSTRIAL VERSUS FOOD AND FEED USES

Recognition of the differing impact of casein imported for industrial uses and that entering for other applications is accorded in the legislative history of several laws passed by Congress during the period of 1957 to 1962. Public Law 87-606 permanently transferred casein to the duty free list of the Tariff Schedules of the United States. In doing this, however, the duty on mixtures of casein, TSUS Item No. 493.16, was retained. This same action had been taken on a temporary basis in Public Laws 85-257, 86-405 and 86-562. The major point of support for the duty free status for casein was that the product's major use was in industrial production.

On the other hand, the duty on mixtures of casein, primarily caseinates, was retained because these products were imported largely for food uses. Concern was expressed that duty free casein might be converted for food use after entering this country. In that regard, the Senate Finance Committee, in its report on H.R. 9862 (Senate Report 1270, April 14, 1960) stated: "The members of the committee, however, will maintain a continuing interest in this matter, and anticipate that the Department of Agriculture and other interested agencies will watch developments and ascertain to the extent feasible the amounts of imported casein being used for, or converted to, edible uses in competition with domestic agricultural products. Should such large scale uses develop, the committee will want to made aware of them."

REPRESENTATIVE PERIOD

The assignment of a zero level quota in this instance is appropriate as the historical use of imported casein has been for industrial purposes and quotas are not being sought in this area. As indicated, available data suggest that substantial food and feed use of imported product did not begin until the late 1950's or early 1960's, well after the initiation of the dairy price support program. Selection of a "representative period" after this substantial conversion of use was well underway would, at least indirectly, support a subversion of the dairy price support program.

SUMMARY

At a time when concerns are being expressed regarding the cost of the dairy price support program and the nonfat dry milk inventory which has accumulated, the casein and caseinate imports for food and feed use represent an increasing interference with the operation of the price support program. This interference is represented both in the increased government costs and in continued depression of nonfat dry milk prices which reduces the price of milk to farmers, interfering with achievement of the basic goals of the price support program.

Section 22 was provided for the express purpose of permitting domestic programs to achieve the intended goals. It is a central element of domestic agricultural policy. Its application in the current situation is not only warranted, but required.

In view of the expanding imports of casein and mixtures of casein and the rapidly changing nature of the use of these imports, we urge immediate action by the Department of Agricultural to recommend to the President that he act under the authority of Section 22 to establish a zero level quota on casein and casein mixtures entering this country for food and feed use.

Sincerely,

PATRICK B. HEALY, *Secretary*.

Attachments.

TABLE 1.—CASEIN UTILIZATION, UNITED STATES, SELECTED YEARS

Use	1940 [1]		1955 [1]		1967 [1]		1970 [1]		1976 [1]	
	Million pounds	Percent	Million pounds	Percent	Million pounds	Percent	Million pounds	Percent	Million pounds	Percent
Food and feed	([3])		1.0	1.3	36.1	36	60.0–70.0	50	40.4 39.2	(food) 36 (feed) 35
Industrial use			([4])				70.0–70.0	50	32.5	29
Paper	42.1	70			34.0	34				
Paints	5.4	9			([3])					
Glues	6.8	11			10.0	10				
Gypsum	([4])				([3])					
Plastics	2.1	4			1.5	2				
Other	3.8	6			18.1	18				
Total	60.2	100	77.5		99.7	100	131.6	100	112.1	100

[1] USDA, "Diary Situation," DS-334, March 1971.
[2] USDA, "Staff Report on Casein," Apr. 20, 1977.
[3] Included in "Other."
[4] Not enumerated.

TABLE 2.—PRODUCTION AND IMPORTS OF CASEIN, UNITED STATES 1935–77

[In million pounds]

Calendar year	Production	Imports	Calendar year	Production	Imports
1935–39 average	48.1	8.2	1962	1.2	95.6
1947	35.8	20.9	1963	1.7	87.9
1948	14.4	40.6	1964	2.1	108.5
1949	18.3	33.1	1965	3.0	91.8
1950	18.5	54.6	1966	2.7	107.9
1951	21.6	43.4	1967	1.4	99.7
1952	7.5	56.8	1968	.8	115.1
1953	5.5	74.2	1969		116.1
1954	5.2	59.8	1970		135.3
1955	3.1	74.5	1971		105.9
1956	2.5	70.7	1972		105.4
1957	1.7	74.6	1973		112.8
1958	.6	91.3	1974		113.3
1959	.1	94.5	1975		58.4
1960	.9	92.2	1976		112.1
1961	.6	101.8	1977		144.2

Source: Various USDA publications.

TABLE 3.—NONFAT DRY MILK PRODUCTION, COMMERCIAL DOMESTIC CONSUMPTION, CCC PURCHASES, DISPLACEMENT BY CASEIN IMPORTS FOR FOOD AND FEED, 1967-77

[Million pounds]

Calendar year	Nonfat dry milk production	Domestic commercial consumption	Net CCC purchases	Casein imports for food, feed	Nonfat equivalent	Adjusted CCC purchases
1967	1,679	982	687	[1] 35.9	104	583
1968	1,594	1,058	558	[1] 46.0	133	425
1969	1,452	1,042	407	[1] 52.2	151	256
1970	1,444	960	452	[2] 67.7	196	256
1971	1,418	958	456	[2] 57.2	166	290
1972	1,223	853	335	[2] 61.1	177	158
1973	917	1,056	37	[2] 69.9	203	(166)
1974	1,020	839	265	[2] 73.6	213	52
1975	1,002	668	395	[2] 39.7	115	280
1976	926	743	157	[2] 79.6	231	(74)
1977	1,105	697	464	111.7	324	140

[1] 36 percent of imports for 1967; 40 percent, 1968; 45 percent, 1969.
[2] 50 percent of imports for 1970; 54 percent, 1971; 58 percent, 1972; 62 percent, 1973; 65 percent, 1974; 68 percent, 1975; 71 percent, 1976.

TABLE 4.—INCREASE IN DAIRY PRICE SUPPORT PROGRAM COSTS DUE TO CASEIN IMPORTS, 1967-77

Calendar year	CCC purchases due to imports (million pounds)	CCC NFDM purchase price (weighted) (price per pound)	Program costs due to imports (million dollars)
1967	104	$0.1950	$20.4
1968	133	.2242	29.7
1969	151	.2335	35.3
1970	196	.2648	51.9
1971	166	.3087	51.3
1972	177	.3170	56.1
1973	203	.3875	78.7
1974	213	.5601	119.2
1975	115	.6070	69.8
1976	231	6240	144.0
1977	324	.6715	217.6

Senator MOYNIHAN. Is Mr. Hitchcock here? Mr. Hitchcock, we welcome you.

STATEMENT OF WILLIAM HITCHCOCK, CHAIRMAN OF THE BOARD, ATLANTIC WIRE CO. OF BRADFORD, CONN., TESTIFYING ON BEHALF OF THE INDEPENDENT WIRE PRODUCERS

Mr. HITCHCOCK. Thank you, Mr. Chairman.

I listened with great interest to the previous testimony, and I hope that you can switch your attention now to steel wire, which is not as glamorous, perhaps, as the dairy industry.

My name is William Hitchcock and I am chairman of the board of the Independent Wire Producers Association.

Senator MOYNIHAN. I assure you of our utmost attention.

Senator NELSON. I have an appointment. I regret I have to leave, but you are in good hands.

Senator MOYNIHAN. Thank you, sir.

Mr. HITCHCOCK. For the sake of the court stenographer, I would like to say I am going to read my statement but there are a couple of places where I am going to depart. I will tell you at that time.

I believe you have a copy of the statement. I would appreciate it being entered into the record. I am appearing today on behalf of the Independent Wire Producers Association, commonly known as IWPA.

The IWPA is a national trade association composed of approximately 35 American companies located throughout the United States. These companies employ thousands of American workers and manufacture hundreds of different types of steel wire and wire products used in every segment of the American economy.

My principal purpose today is to illustrate the fact that America's foreign economic policy and the existing trade laws do not reflect, much less respond, to the enormous competitive problems facing our members as well as all other independent, or nonintegrated, American producers concerned with foreign trade.

The impact of international trade on our association's member companies arises from the fact that the independent or nonintegrated wire producer does not manufacture steel. We manufacture wire and wire products. Accordingly, the independent wire producer must purchase his basic raw material—wire rod—from domestic and foreign steel producers.

Most of these steel producers also manufacture wire and wire products. Thus, the independent wire producer competes directly with the supplier of his raw material and must, therefore, have access to raw material from various sources in order to avoid being squeezed between the price of the raw material and the price of the finished product.

For example, if a foreign or domestic steel producer increases the price of wire rods to us without increasing the price of his wire products to our customers, we must find another raw material supplier in order to remain competitive.

In the last 8 months, we have had two examples. Last July, the Bethlehem Steel Co., at the same time that they raised the price of our raw material to the industry wire rod, they decreased the selling price of the wires which were in competition with them and the rest of the integrated industries, therefore diminishing our margin by $17 a net ton.

Bethlehem Steel Co. last July, in announcing an increase of wire rods of $20 per net ton decreased the selling price of their wire, the most popular kind of wire, called "manufacturer's wire," by an amount which decreased the spread between rods and wire by $17 a net ton. They raised the price of raw material and decreased the selling price of the wire.

Last Friday a week ago, U.S. Steel Corp. announced, effective April 1, an increase in the price of wire rods of $20 a net ton and at the same time, increased the selling prices of wire $20 a net ton.

This means, for practical purposes, most of us, in buying wire rods have a 5-percent scrap factor; for every $20 more we pay we can only get $18 back from our customers, because we are competing against the bigger steel companies.

Economists describe the complex situation where a supplier is also a competitior of his customer as "dual distribution." Incidentally, no person is more familiar with the complexities of "dual distribution" than Senator Long who, almost 15 years ago, first focused congressional attention on the problems facing the thousands of independent American companies in many industries.

All too often, American steel producers consider us as importers while foreign steel producers regard us as protectionists

More importantly, however, the Federal agencies purportedly responsible for the establishment of America's foreign economic policy have traditionally ignored the dual distribution structure of our segment of the steel industry—and, I suspect, the dual distribution structure of other industries. Despite the fact that our member companies employ thousands of American workers and manufacture products used in virtually every segment of the American economy, the Treasury Department and the other Federal agencies supposedly responsible for a so-called trade policy are apparently under too many pressures either to function realistically or to consider our special situation.

Let me give you two specific examples:

First, from 1967 through 1974, our raw material—carbon steel wire rod—was subject to the voluntary steel export restraint agreements with Japan and the European Community. However, a number of the competitive wire products made from our raw material were not subject to these VRA's. During those 7 years, imports of those wire products not covered by the VRA's increased by 125 percent.

Second, 4 years later, the agencies responsible for trade policy did it again. Beginning in January of 1978, our raw material, wire rod, became subject to the trigger price mechanism, but most of the products which we manufacture were not covered by trigger prices. As you may know, our member companies waged an enormous, but ultimately unsuccessful battle with the Treasury Department to keep wire rods out of the trigger price mechanism. Despite the fact that wire rods are a unique steel mill product and are the only steel mill product which qualifies for use solely as raw material, the Treasury Department, for a wide variety of legal, economic, and political reasons, decided—and continues—to include wire rod in the trigger price mechanism.

Some of us talked, had a nice conference, with Mr. Mundheim and Mr. Erhopf early last year. We brought in about 40 pounds of samples of various types of steel that were under trigger price, some were not shown what a wire rod was, and so on, and I think we convinced them that wire rod was a semifinished raw material and had no place else to go except into wire and they said, I think you have a good point there, because we had to ask for its elimination from the trigger price mechanism, but they said we will have to take this up with the American Iron & Steel Institute.

We said fine, but when you do so, please invite us in so we will have an equal opportunity to explain it to you. That was the last we heard of it.

Perhaps these examples would be meaningless if importations of carbon steel wire rod were injuring the American steel industry or were having other injurious effects on the American economy. Nothing could be further from the truth.

In 1963, the Tariff Commission decided that the dumping of European wire rods was not injuring the American steel industry. Since that date, not one single American steel producer has successfully established that foreign wire rods—whether dumped or otherwise—were injuring the American steel industry. In fact, the Arthur D. Little Co., as well as other reliable sources, have established that America's steel producers simply do not have enough capacity to supply America's demand for this raw material.

As a result, America's demand for wire and wire products is increasingly satisfied by imports. We are prepared to provide whatever statistics or other information the subcommittee or its staff may request in order to support my statements.

The trade laws simply do not consider the competitive pressures on independent producers, and neither the International Trade Commission nor any of the responsible executive agencies have been provided with legislative guidelines for dealing with these problems.

Understandably, the result is confusion. For example, in the 1963 wire rod dumping cases, the American steel industry alleged that the industry being injured by the dumped imports consisted solely of the wire rods sold to independent wire producers and did not include the wire rods consumed in the American producer's own facilities.

The Tariff Commission rejected this concept and held that the American wire rod industry consists of all wire rods, whether used in captive wire mills or sold to independent wire producers. The reason given by the Tariff Commission for its conclusion is a magnificent exposition of the problem faced by any independent in any major industry.

Specifically, the Tariff Commission held that: ". . . the determination of the quantity of rods to be produced and the proportion thereof to be used in captive mills, as well as the pricing policies relating to market sales, are almost fully within the managerial discretion of the domestic producers."

Unfortunately, we are advised by counsel that in the years subsequent to this decision, the Commission—now, of course, the International Trade Commission—has generally adopted the view that the industry in the United States may be divided into captive and open market segments. In most instances of dual distribution, such a philosophy is unrealistic in terms of the marketplace, and we would urge the Congress to seriously consider this problem.

We have instructed the association's counsel to provide the subcommittee's staff with a memorandum of law specifically addressed to this problem. Based on my 40 years of experience in the independent wire producer segment of the world steel industry, I can also speak with some authority with respect to the impact of international trade on this industry. However, I am reasonably confident that the same pressures affect independent gasoline dealers, independent textile manufacturers, independent chemical producers and, in fact, an enormous productive segment of American industry.

In summary, I can assure you that America's wire drawing industry reflects most of the competitive pressures at work in the global steel industry. However, the foreign economic policy of the United States, and the trade laws designed to implement these laws, simply have not considered the problems faced by independent steel producers in the international markets.

America's independent wire producers purchase their raw material, wire rod, from foreign and domestic steel companies and also compete with the same foreign and domestic steel companies. In the purchase of our raw material, the member companies of our association are acutely aware of the benefits afforded by competition between foreign and domestic steel producers. In the manufacture and sale of wire and wire products, our member companies compete, on a daily basis, with foreign and domestic wire producers and we are exceptionally sensitive to anticompetitive practices.

In short, we seek nothing more than a body of laws which will permit us to have free and fair access to our raw material and to compete on an equal basis with any competition in any market.

Mr. HITCHCOCK. I would like to ad lib one more thing. The effect of trigger pricing on our raw material which has virtually shut off the importation of most wire rod, or it is now shutting it off, really brings about a cover for the domestic wire rod producers which are, at the same time, our competitors, so they have, in effect, a monopoly because the market price in this country is less than the trigger price.

Senator MOYNIHAN. That is a specific situation that, it seems to me, we have trouble handling. You are going to give us this memorandum of law?

Mr. HITCHCOCK. Yes, Mr. Chairman.

Senator MOYNIHAN. I think your last statement is one that poses real problems to trade policy; if the trigger price is more than the market price, what are you supposed to do?

Mr. HITCHCOCK. Particularly when there is a shortage.

Senator MOYNIHAN. I must say we must ask the Office of the Trade Negotiator, how they will respond to your testimony.

Mr. HITCHCOCK. We have even talked to OCED.

Senator MOYNIHAN. This cannot be a problem confined to the American economy.

Mr. HITCHCOCK. It has upset the Western European economy, as far as wire rod producers are concerned.

Senator MOYNIHAN. The staff will note that we should write to the Office of the Trade Negotiator on this specific question, because it is a legitimate question, and an important one. It is one that Senator Long will be interested in. We will tell him about your testimony. I, for one, am willing to forgive you for all the damage that barbed wire has done to cows. It has vastly inhibited their lives, but I suppose it is progress, of sorts.

Mr. HITCHCOCK. I was going to ask you, Mr. Chairman, to whom should we address sending some additional information?

Senator MOYNIHAN. If you would send that off to Senator Ribicoff as permanent chairman of the subcommittee, I know he will appreciate it. Senator Ribicoff's aides are here, and we will look forward to having it.

We thank you very much.

Mr. HITCHCOCK. Thank you very much.

[The prepared statement of Mr. Hitchcock and his supplementary memorandum follows:]

STATEMENT BY WILLIAM HITCHCOCK ON BEHALF OF THE INDEPENDENT WIRE PRODUCERS ASSOCIATION

My name is William Hitchcock and I am Chairman of the Board of the Atlantic Wire Company of Branford, Connecticut. I am appearing today on behalf of the Independent Wire Producers Association (commonly known as "IWPA").

The IWPA is a national trade association composed of approximately 85 American companies located throughout the United States. These companies employ thousands of American workers and manufacture hundreds of different types of steel wire and wire products used in every segment of the American economy.[1]

[1] A list of carbon steel wire and wire products is attached, as Exhibit A.

My principal purpose today is to illustrate the fact that America's foreign economic policy and the existing trade laws do not reflect, much less respond to the enormous competitive problems facing our members as well as all other "independent" (or "non-integrated") American producers concerned with foreign trade.

The impact of international trade on our Association's member companies arises from the fact that the "independent" (or "non-integrated") wire producer does not manufacture steel. We manufacture wire and wire products. Accordingly, the "independent" wire producer must purchase his basic raw material—wire rod—from domestic and foreign steel producers. Most of these steel producers also manufacture wire and wire products. Thus, the "independent" wire producer competes directly with the supplier of his raw material, and must, therefore, have access to raw material from various sources in order to avoid being "squeezed" between the price of the raw material and the price of the finished product. For example, if a foreign or domestic steel producer increases the price of wire rods to us without increasing the price of his wire products to our customers, we must find another raw material supplier in order to remain competitive.

Economists describe the complex situation where a supplier is also a competitor of his customer as "dual distribution". (Incidentally, no person is more familiar with the complexities of "dual distribution" than Senator Long who, almost 15 years ago, first focused Congressional attention on the problems facing the thousands of "independent" American companies in many industries.)

All too often, American steel producers consider us as "importers" while foreign steel producers regard us as "protectionists".

More importantly, however, the federal agencies purportedly responsible for the establishment of America's foreign economic policy have traditionally ignored the "dual distribution" structure of our segment of the steel industry (and, I suspect, the "dual distribution" structure of other industries). Despite the fact that our member companies employ thousands of American workers and manufacture products used in virtually every segment of the American economy, the Treasury Department and the other federal agencies supposedly responsible for a so-called "trade policy" are apparently under too many pressures either to function realistically or to consider our special situation.

Let me give you two specific examples:

First, from 1967 through 1974, our raw material—carbon steel wire rod—was subject to the "voluntary" steel export restraint agreements with Japan and the European Community. However, a number of the competitive wire products made from our raw material were not subject to these VRA's. During those seven years imports of those wire products not covered by the VRA's increased by 125 percent.[1]

Second, four years later, the agencies responsible for "trade policy" did it again. Beginning in January of 1978, our raw material, wire rod, became subject to the "trigger price mechanism", but most of the products which we manufacture were not covered by "trigger prices". As you may know, our member companies waged an enormous, but ultimately unsuccessful battle with the Treasury Department to keep wire rods out of the "trigger price mechanism". Despite the fact that wire rods are a unique steel mill product and are the only steel mill product which qualifies for use solely as raw material, the Treasury Department, for a wide variety of legal, economic and "political" reasons, decided (and continues) to include wire rod in the "trigger price mechanism".

Perhaps these examples would be meaningless if importations of carbon steel wire rod were injuring the American steel industry or were having other injurious effects on the American economy. Nothing could be further from the truth. In 1963, the Tariff Commission decided that the dumping of European wire rods was not injuring the American steel industry. Since that date, not one single American steel producer has successfully established that foreign wires rods (whether "dumped" or otherwise) were injuring the American steel industry. In fact, the Arthur D. Little Company (as well as other reliable sources) have established that America's steel producers simply do not have enough capacity to supply America's demand for this raw material. As a result, America's demand for wire and wire products is increasingly satisfied by imports. We are prepared to provide whatever statistics or other information the Subcommittee or its staff may request in order to support my statements.

---

[1] The actual statistics are attached as Exhibit B.

The trade laws simply do not consider the competitive pressures on independent producers, and neither the International Trade Commission nor any of the responsible executive agencies have been provided with legislative guidelines for dealing with these problems. Understandably, the result is confusion. For example, in the 1963 wire rod dumping cases, the American steel industry alleged that the "industry" being injured by the "dumped" imports consisted solely of the wire rods sold to "independent" wire producers and did not include the wire rods consumed in the American producer's own facilities. The Tariff Commission rejected this concept and held that the American wire rod industry consists of all wire rods, whether used in "captive" wire mills or sold to "independent" wire producers. The reason given by the Tariff Commission for its conclusion is a magnificent exposition of the problem faced by any independent in any major industry. Specifically, the Tariff Commission held that:

"* * * the determination of the quantity of rods to be produced and the portion thereof to be used in captive mills, as well as the pricing policies relating to market sales, are almost fully within the managerial discretion of the domestic producers."

Unfortunately, we are advised by counsel that in the years subsequent to this decision, the Commission (now, of course, the International Trade Commission) has generally adopted the view that the "industry" in the United States may be divided into "captive" and "open market" segments. In most instances of dual distribution, such a philosophy is unrealistic in terms of the marketplace, and we would urge the Congress to seriously consider this problem. We have instructed the Association' counsel to provide the Subcommittee's staff with a Memorandum of Law specifically addressed to this problem. Based on my 40 years of experience in the independent wire producer segment of the world steel industry, I can speak with some authority with respect to the impact of international trade on this industry. However, I am reasonably confident that the same pressures affect independent gasoline dealers, independent textile manufacturers, independent chemical producers and, in fact, an enormous productive segment of American industry.

In summary, I can assure you that America's wire drawing industry reflects most of the competitive pressures at work in the global steel industry. However, the foreign economic policy of the United States, and the trade laws designed to implement these laws, simply have not considered the problems faced by "independent" steel producers in the international markets. America's independent wire producers purchase their raw material, wire rod, from foreign and domestic steel companies and also compete with the same foreign and domestic steel companies. In the purchase of our raw material, the member companies of our Association are acutely aware of the benefits afforded by competition between foreign and domestic steel producers. In the manufacture and sale of wire and wire products, our member companies compete, on a daily basis, with foreign and domestic wire producers and we are exceptionally sensitive to anticompetitive practices. In short, we seek nothing more than a body of laws which will permit us to have free and fair access to our raw material and to compete on an equal basis with any competition in any market.

EXHIBIT A.—*The products*

The following products bear a direct relationship to the global carbon steel wire and wire products industry:

	TSUSA item
The raw material: Wire rods	608.70–.75
Wire and wire products:	
Flat wire	609.20–.37
Round wire, under 0.06 inch in diameter	609.40
Firescreen wire.	
Fine wire.	
Galvanized fine wire.	
Box staple wire.	
Rope wire.	
Lathers line wire.	
Galvanized fine high-carbon wire.	
Tie bead wire.	
Fine high-carbon wire.	
Round wire, 0.06 inch or more in diameter, not over 25 percent carbon	609.41

Straightened and cut low-carbon wire.
Low-carbon bright basic wire.
Annealed basic wire.
Baler wire.
Cold heading quality wire.
Galvanized basic straightened and cut wire.
Galvanized vineyard wire.
Box binding wire.
Fence weaving wire.
Galvanized basic wire.

Round wire, over 25 percent carbon (.060 inch or more in diameter) ---------- 609.43
Straightened and cut high-carbon wire.
Mechanical spring wire.
Upholstery spring wire.
Oil tempered wire.
Snap tie wire.
Music wire.
Cold heading quality wire.
Pulp tie wire.
ACSR wire.
High-carbon vineyard wire.
Prestressed concrete strand wire.
Rope wire.

Oval, rectangular and shaped wire---------- 609.70-.76
Milliners' galvanized wire---------- 642.96-.97
Thumb tacks of iron or steel heads, coated with plastics or metal 646.02
Staples ---------- 646.20
Corrugated fasteners---------- 646.22-.32
Glaziers' points.
Hook nails.
Ring nails.
Brads.
Nails.
Spikes.
Staples.
Tacks.

Barbed wire---------- 642.02
Strand ---------- 642.10
Prestress strand.
Guy strand.
Cables.
Other.

Wire rope---------- 642.12-.16
Galvanized wire fencing---------- 642.35
Field fence.
Chain link fence.
Welded fence.

Poultry and stucco netting---------- 642.45
Welded wire fabric and general purpose fabric---------- 642.80
Bale ties---------- 642.90-.91

IMPORTS FROM ALL SOURCES
[Net tons]

	1968	1969	1970	1971	1972	1973	1974
Wire rope	22,966	26,813	29,059	28,548	41,922	48,158	64,114
Wire strand	78,795	91,618	112,264	136,479	161,711	191,011	210,010
Welded wire fabric	16,681	12,028	14,357	15,348	12,511	15,076	32,171
Other nails and staples	18,979	12,606	21,657	21,966	30,676	29,675	28,972
Bolts, nuts, and rivets	147,897	172,846	181,476	170,882	206,314	223,083	305,266
Total nonquota items	285,318	324,911	358,813	373,223	453,134	507,003	640,533

Supplementary Memorandum to Statement by William Hitchcock on Behalf of the Independent Wire Producers Association

I. Introduction

This Memorandum is submitted on behalf of the Independent Wire Producers Association ("IWPA"), and supplements the statement given by William Hitchcock before the Subcommittee on International Trade of the Senate Finance Committee on February 22, 1979 (attached hereto).

II. Conclusion

At a time when the foreign trade laws of the United States are being reviewed and revised, it is urged that the Congress render some recognition to the concept of "dual distribution." Specifically, it is requested that the appropriate Congressional Committees indicate in their reports that an "industry" should be defined as including total production, and not merely production for "internal" or "open market" consumption. Such action would alleviate the grave inequities suffered by thousands of American companies because of the abuse of administrative "discretion" and the application of inconsistent foreign trade policies.

III. Description of the Problem

The enforcement of the federal foreign trade laws has continually had an adverse impact on America's "independent" (or "non-integrated") steel fabricators, particularly the independent steel wire producers.

In brief, the economic concept of "dual distribution" has never been recognized adequately by the federal agencies principally responsible for America's foreign trade laws and policies, and this fact has created manifestly inequitable and unfair conditions and has fostered demonstrable restraints on competition.

While this Memorandum is submitted on behalf of the IWPA to illustrate the problem in the context of the steel industry, the facts set forth in this Memorandum are equally applicable to any industry in which large, "integrated" producers compete with their non-integrated (or "independent") customers.

In the United States (and throughout the global steel industry), "independent" (or "non-integrated") producers of steel wire and wire products must purchase their basic raw material, wire rod, from large, integrated steel producers. Most of these steel producers also manufacture wire and wire products. Thus, the "independent" wire producer competes directly with the supplier of his raw material and is, therefore, vulnerable to being "squeezed" between the price which he must pay for his raw material and the price at which he can sell his finished product in competition with the supplier of his raw material. To avoid being caught in this "squeeze" the independent producer must have access to several alternate suppliers of his raw material.

The United States International Trade Commission has very recently recognized the "dual distribution" nature of the steel industry and has described "dual distribution" as follows:

> [Dual distribution] occurs when a vertically integrated producer or importer of a raw material sells that product to a U.S. consumer and in turn competes with that consumer in the sale of the finished product.[1]

"However, dual-distribution" has never formally been recognized as a consideration in measuring "injury" to a domestic "industry" in proceedings pursuant to the Antidumping Act,[2] the "Escape Clause",[3] or other statutes concerned with import competition.[4] Nevertheless, dual distribution is an intrinsic characteristic of the global steel industry,[5] and the failure of the federal trade laws to adequately recognize this fact has subjected independent American producers to inequitable treatment and clear competitive disadvantages.

---

[1] Conditions of Competition in the Western U.S. Steel Market Between Certain Domestic and Foreign Steel Products, Interm Report on Investigation No. 332-87 Under Section 332 of the Tariff Act of 1930, As Amended, USITC Pub. 951 (March, 1979) at 61.

[2] Section 201 of the Antidumping Act of 1921, as amended by the Trade Act of 1974, (19 USC 160 *et seq.*)

[3] Section 201 of the Trade Act of 1974 (19 USC 2251).

[4] (Countervailing Duty Law) Section 303(b) of the Tariff Act of 1930, as amended (19 USC 1303(b)); Section 337 of the Tariff Act of 1930, as amended (19 USC 1337); Section 301 of the Trade Act of 1974 (19 USC 2411).

[5] *See*, "Dual Distribution" in Report to the President on the Economic Position of the Steel Industry (Cabinet Committee on Economic Policy, Washingon, July 6, 1971); *See also* Dual Distribution, Hearings Before the Subcommittee on Antitrust and Monopoly of the Senate Committee on the Judiciary, 89th Cong., 1st Sess. (1966).

IV. DISCUSSION

A. The International Trade Commission.

The International Trade Commission has frequently been required to determine whether an "industry" consists of all United States producing facilities or only those facilities which produce for sale on the "open market". Over 15 years ago, in a landmark series of decisions, the Commission was faced with the question of whether the United States wire rod industry consisted only of those wire rods produced for sale on the "open" market (i.e., to non-integrated wire producers) or whether the industry included all wire rods produced by United States manufacturers (including those produced for use in their own wire mills). The Commission concluded that the industry consisted of the "totality" of the rods produced, and included the wire rods used in "captive" wire mills as well as the wire rods produced for sale on the "open" market. There were two basic facts which led to the Commission's unanimous decision: first,

> With regard to 'captive' production, the Commission observes that no domestic producer of wire rods is without facilities for using rods in a captive wire mill.

and, second:

> * * * the determination of the quantity of rods to be produced and the proportion thereof to be used in captive mills, as well as the pricing policies related to market sales, are almost fully within the managerial discretion of the domestic producers.

Based on these facts, the Commission found "no merit" in the contention of the United States producers that the industry included only "wire rods for sale" and not "the portion used by the mancfacturers in their own intergrated mills."[6]

However, in 1972, the Commission reached a different conclusion with the result that independent producers of fine paper were placed at a competitive disadvantage relative to integrated paper and paperboard producers. In *Northern Bleached Hardwood Kraft Pulp from Canada,*[7] the Tariff Commission divided the United States producing industry into "captive production" and "production for the market", and determined that the latter industry was suffering injury from less than fair value imports. In total disregard of its observation in the wire rod cases, the Commission stated:

> Most U.S. production is captive—that is, the majority of domestic production is further processed in the producer's mill into paper and paperboard. However, the portion sold on the open market is in direct competition with LTFV imports from Canada and represents an important source of revenue, especially during periods of soft demand.[8]

The finding of injury to the domestic industry as defined, and the consequent assessment of dumping duties on Canadian pulp placed independent paper producers in a position where the supply of their raw material was restricted while they were simultaneously forced to compete with the integrated paper manufacturers in the market for paper.

Fortunately, the Commission reversed itself when, two years later, the Commission had occasion to determine whether the same domestic industry would be injured if the finding of dumping were revoked.[9] In a "no injury" determination, the Commission found that imports of Canadian pulp had declined, prices of Canadian pulp were then "significantly higher than prices of domestic pulp", but that demand was so great that:

> The nonintegrated paper manufacturers * * * are finding it particularly difficult to obtain a steady supply of pulp.[10]

In 1976, the Commission was again confronted with the question of whether import competition was injuring a domestic dual distribution industry, and the Commission's failure to recognize the position of the independent producer resulted in economic disaster to that segment of the industry. In January 1976, the Commission determined that stainless steel wire rods (and other stainless steel

[6] *Hot-Rolled Carbon Steel Wire Rods from Belgium*. TC Pub. 93 (1963) at 6–7. Identical language was used in *Hot-Roller Carbon Steel Wire Rods from Luxembourg*, TC Pub. 94 (1963); *Hot Rolled-Carbon Steel Wire Rods from West Germany*, TC Pub. 95 (1963) and *Hot-Rolled Carbon Steel Wire Rods from France,* TC Pub. 99 (1963).

[7] TC Pub. 530 (December 1972).

[8] *Id.*, at 4.

[9] *Northern Bleached Hardwood Kraft Pulp from Canada,* TC Pub. 687 (September 1974).

[10] *Id.*, at 10.

mill product) were being imported into the United States in such increased quantities as to be a substaintial cause of serious injury to the United States producers.[11]

As a result of the Commission's decision, the President proclaimed import quotas and negotiated orderly marketing agreements with respect to stainless steel wire rod.[12] However, six months later, the Commission failed to appreciate the impact of its decision on the independent producers of stainless steel wire when it determined they were not being injured from imports of stainless steel wire:[13]

> Stainless wire is, of course, drawn from stainless steel wire rod. However, in the previous investigation, we were considering an industry composed not only of facilities producing stainless steel rods, but also producing stainless steel bars, with bar production forming the bulk of the production of such industry.[14]

In determining that the stainless steel wire industry faced no present injury or threat of injury from imports, the Commission recognized the problem faced by the non-integrated producers:

> Also, it is highly speculative that the import quotas proclaimed and the orderly marketing agreement announced by the President with respect to imports of stainless steel bar and wire rod will significantly affect stainless wire producers. * * * It should not be assumed * * * that these restrictions will shift the product mix of imports away from stainless wire rod to stainless wire.[15]

In fact, this assumption proved completely wrong, since the restrictions did "shift the product mix of imports away from wire rod to stainless wire", and independent stainless wire producers faced an increase in stainless wire imports of 78% within two and one half years of the Commission's decision.[16]

B. Other Federal agency actions and judicial considerations

Oversight of the position of the indepedent steel producer has been reflected in the administration of trade policy by other agencies besides the International Trade Commission. In 1964, the Office of the Special Representative for Trade Negotiations ("STR") negotiated Voluntary Restraint Agreements ("VRA's) with Japan and the European Community which limited the importation of carbon steel wire rod to the United States, but did not limit the importation of many of the wire products made from wire rod. During the VRA's seven years, imports of those wire products not covered by the VRA's increased by 125%.[17]

Since adequate supplies of wire rod were unavailable from domestic integrated producers,[18] independent producers were deprived of a vital and indispensible source of their raw material, while simultaneously being forced to compete with a surge of imported wire products which were unrestricted by the VRA's.

Four years later, the Treasury Department took action in total disregard of the dual distribution nature of the steel industry and the role of the independent producer in that industry. Beginning in January 1978, wire rod became subject to the "Trigger Price Mechanism", while most of the wire products manufactured by the independent producers were not covered by "trigger prices".[19] Despite a vigorous effort by the member companies of the IWPA to persuade the Treasury Department to remove wire rods from the "trigger price mechanism", this effort was unsuccessful, despite the fact that wire rod is a unique steel mill product and the only steel mill product which is used solely as a raw material.

While the concept of dual distribution has been virtually ignored in the administration of our laws and policies governing foreign trade, dual distribution has been the subject of extensive judicial and scholarly consideration.[20]

Under general principles of United States antitrust law, dual distribution, by itself, is not unlawful:

---

[11] *Stainless Steel and Alloy Tool Steel, USITC Pub.* 756 (January 1976).
[12] Presidential Proclamation 4445, June 11, 1976, 41 Fed. Reg. 24101 (1976).
[13] *Round Stainless Steel Wire,* USITC Pub 776 (June 1976).
[14] *Id.*, at 10.
[15] *Id.*, at 12.
[16] United States Department of Commerce, IM 146.
[17] Exhibit A attached hereto.
[18] *Report to the President, supra* note 5, at 41.
[19] Exhibit B contains a list of carbon steel wire and wire products. Exhibit C contains a list of products covered by the "Trigger Price Mechanism".
[20] *See, e.g.*, W. Adams, "Vertical Power, Dual Distribution, and the Squeeze: A Case Study in Steel", 9 Antitr. Bull. 493 (1964); W. Adams and J. Dirlam, "Steel Imports and Vertically Oligopoly Power", 54 Am. Econ. Rev. 626 (1964).

* * * there is nothing inherently evil in a dual distribution system whereby a manufacturer may sell its own products to the customers directly through company outlets along side independent dealers.[21]

However, it is very clear that dual distribution does become an "antitrust problem" when it is used in connection with other anti-competitive practices:

Whether dual distribution is or is not illegal or evil in and of itself, it does become an antitrust problem in the context of its use by a company possessing substantial market power.[22]

This concept has been repeatedly adhered to by the federal courts:

No antitrust objective would be served by holding that a manufacturer cannot terminate its independent distributors and replace them with its own distribution system, *absent a showing that the termination was designed to further some collateral prohibited activity*, such as, enforcing a tying arrangement, eliminating price-cutters, or creating or strengthening a monopoly position. [citing cases][23]

In the now famous *Alcoa* case, *supra*, Judge Learned Hand stated the dual distribution problem in the aluminum industry:

* * * 'Alcoa' consistently sold ingot at so high a price that the 'sheet rollers,' who were forced to buy from it, could not pay the expenses of 'rolling' the 'sheet' and make a living profit out of the price at which 'Alcoa' itself sold 'sheet'.[24]

In an action brought by the government[25] to enjoin a merger under Section 7 of the Clayton Act, as amended,[26] a federal district court clearly identified the following four ways in which an independent producer of wire rope faces competitive disadvantages because he must purchase his basic material, rope, wire, from a supplier who also manufacturers wire rope:

* * * (1) in a period of shortage of rope wire a competitor-supplier may supply his own need first; (2) the competitor supplier, as a sales argument against the independent, may point to the latter's dependency upon him, the supplier, for raw materials; (3) if the independent sells wire rope below his competitor-supplier's price for wire rope he may lose his source of supply, thus giving his supplier a form of price control over him; and (4) the opportunities for a price squeeze on the independent are enhanced, since the supplier may shift his profit between rope wire and wire rope in such a manner as to narrow or eliminate the independent's margin of profit on wire rope."[27]

Thus, while dual distribution is an intrinsic characteristic of free competition and fair trade, the competitive disadvantages it presents to the independent producer should not be ignored when the trade practices under consideration involve imported rather than domestic articles of commerce. The independent producer is at the mercy of integrated producers, be they domestic or foreign, and the government agencies responsible for the administration of our foreign trade laws should be afforded some Congressional direction concerning this problem.

EXHIBIT A

IMPORTS FROM ALL SOURCES

[In net tons]

	1968	1969	1970	1971	1972	1973	1974
Wire rope	22,966	26,813	29,059	28,548	41,922	48,158	64,114
Wire strand	78,795	91,618	112,264	136,479	161,711	191,011	210,010
Welded wire fabric	16,681	12,028	14,357	15,348	12,511	15,076	32,171
Other nails and staples	18,979	21,606	21,657	21,966	30,676	29,675	28,972
Bolts, nuts, and rivets	147,897	172,846	181,476	170,882	206,314	223,083	305,266
Total, nonquota items	285,318	324,911	358,813	373,223	453,134	507,003	640,533

[21] *Rea v. Ford Motor Company*, 355 F.Supp. 842, 865 (1973), *reversed on other grounds*, 497 F.2d 577 (1974).

[22] *Rea v. Ford Motor Company*, *supra*, at 867; *See also United States v. Aluminum Co. of America*, 148 F.2d 416, 437–438 (2d Cir. 1945).

[23] *Diehl & Sons, Inc. v. International Harvester Co.*, 426 F.Supp. 110, 114 (1976) (Emphasis in original).

[24] *United States v. Aluminum Co. of America*, *supra*, note 22, at 437.

[25] *United States v. Bethleham Steel Corporation*, 168 F. Supp. 576 (S.D.N.Y. 1958).

[26] 15 USCA § 18.

[27] *Supra* note 25, at 612–613.

Exhibit B—The Products

The following products bear a direct relationship to the global carbon steel wire and wire products industry:

	TSUSA item
The raw material	
Wire rods	608. 70–. 75
Wire and wire products	
Flat wire	609. 20–. 37
Round wire—under 0.060'' in diameter	609. 40
Firescreen wire	
Fine wire	
Galvanized fine wire	
Box staple wire	
Lathers line wire	
Rope wire	
Galvanized fine high carbon wire	
Tie bead wire	
Fine high carbon wire	
Round wire—0.060'' or more in diameter, not over 25% carbon	600. 41
Straightened and cut low carbon wire	
Low carbon bright basic wire	
Annealed basic wire	
Baler wire	
Cold heading quality wire	
Galvanized basic straightened and cut wire	
Galvanized vineyard wire	
Box binding wire	
Force weaving wire	
Galvanized basic wire	
Round wire—over 25% carbon (.060'' or more in diameter)	609. 43
Straightened and cut high carbon wire	
Mechanical spring wire	
Upholstery spring wire	
Oil tempered wire	
Soap tie wire	
Music wire	
Cold heading quality wire	
Pulp tie wire	
ACSR wire	
High carbon vineyard wire	
Prestressed concrete strand wire	
Rope wire	
Oval, rectangular and shaped wire	609. 70–. 76
Milliners' galvanized wire	642. 96–. 97
Thumb tacks of iron or steel heads, coated with plastics or metal	646. 02
Staples	646. 20
Corrugated fasteners	646. 22–. 32
Glaziers' Points	
Hock nails	
Ring nails	
Brads	
Nails	
Spikes	
Staples	
Tacks	
Barbed wire	642. 02
Strand	642. 10
Prestress strand	
Guy strand	
Cables	
Other	
Wire rope	642. 12–. 16
Galvanized wire fencing	642. 35
Field fence	
Chain link fence	
Welded fence	

Poultry and stucco netting	642.45
Welded wire fabric and general purpose fabric	642.80
Bale ties	642.90-.91

EXHIBIT C—CATEGORIES OF STEEL PRODUCTS SUBJECT TO THE TRIGGER PRICE MECHANISM

Category and Title
2—Wire rods
3—Structural shapes
4—Sheet piling
5—Plates
6—Rail and track accessories
8—Concrete reinforcing bars
9—Bars under 3"
10—Carbon bars
11—Alloy bars
12—Cold finished bars
14—Welded pipe and tubing
15—Other pipe and tubing
16—Round and shaped wire
19—Wire fencing
20—Wire nails
21—Barbed wire
22—Black plate
23—Tin plate
25—Hot rolled sheets
26—Cold rolled and electrical steel sheets
27—Coated sheets (including galvanized)
29—Hot rolled strip
32—Tin-free steel

Senator MOYNIHAN. Now, our final witness, we will have the pleasure of hearing Mr. David Steinberg, president of the U.S. Council for an Open World Economy.

Mr. Steinberg, it is good of you to come and we are very much aware that not everyone who appears before us does so as a representative of the general public interest, although their interests are entirely legitimate, so we are particularly glad to hear what you have to say.

STATEMENT OF DAVID STEINBERG, PRESIDENT, U.S. COUNCIL FOR AN OPEN WORLD ECONOMY

Mr. STEINBERG. Thank you, Mr. Chairman. I am David J. Steinberg, president of the U.S. Council for an Open World Economy. Ours is a private, nonprofit organization engaged in research and public education on the merits and problems of achieving an open international economic system. We speak for no special private, economic interests. Our only standard is the overall pubic interest.

Our council supports free and fair international trade. In fact, we would like to see a real effort made, with deliberate speed, to achieve the freest, the most open, and the most equitable international economic system.

Our council is interested in all the issues posed by the Multilateral Trade Negotiations, but our testimony today, Mr. Chairman, is focused on a particular flaw that we see in the safeguard mechanism that has been practiced by our country for the past 30 years and, indeed, I think by every other country in the world trading system. It is a flaw also in the General Agreement on Tariff and Trade, and I see no indication that this flaw is going to be corrected by the newly negotiated trade agreement.

The flaw takes the form of the absence of a requirement that no trade restriction shall be imposed on legitimate imports except as a component part of a coherent, constructive, balanced industry-adjustment strategy addressing the real problems and the real needs of a particular domestic industry for whose benefit import restrictions are found to be essential.

Thus, Mr. Chairman, we have today a textile trade policy whereby we restrict imports of textiles by one means or another, but there is no coherent textile policy addressing the real problems and needs of that major industry. We have steel import restrictions of one kind or another, but there is no coherent steel policy. And you go right down that list, as far as I know, of every instance where imports are restricted, and in no case that I can think of are those import restrictions a part of a coherent strategy to achieve a successful adjustment of the particular industry to the exigencies of a rapidly changing and increasingly competitive world economy.

We also, in our testimony, are concerned with the proposal that, under the safeguard mechanism, imports from particular countries may be restricted as against today's rule that imports of all countries have to be restricted where import restrictions are found to be essential for an import-impacted industry. We think that to permit selective import restrictions against particular foreign exporters, but not against other foreign exporters, will prove to be a can of worms, a Pandora's box, or you choose the metaphor.

In the interest of time, Mr. Chairman, I am going to stop there. I thank you very much for this privilege.

Senator MOYNIHAN. We thank you for what you have said. There is no question about the truth of your first statement, that we have half a policy, as it were, for an increasing range of American industry. I was very much involved in the original textile negotiations under President Kennedy and we still have as much protection, we have that part of a policy which the industry typically will desire which is to prevent competition but not that part which it might not desire, which seeks to increase its efficiency through various activities that might be encouraged by the Government or required as a condition of the other.

Nothing has been required of the industries who have received this protection. They have just received it.

Mr. STEINBERG. That is correct.

Senator MOYNIHAN. Yet, what worries me, the only thing that I would hesitate over about your testimony is that I think that we are clumsily enough interfering to the extent that we do. To interfere further just is to enhance the dislocation that comes as a consequence—or am I wrong?

Mr. STEINBERG. But where Government provides import restrictions for a particular industry, this in itself is interference. Import restriction against legitimate imports is what we are talking about. We are not talking about unfair trade. We are talking of subsidies. We are not talking about dumping. We are talking about controls on legitimate import competition.

These import restrictions are, let us not forget, subsidies at public expense and the American people have a right to expect that these subsidies, these import restrictions, will be used for a constructive purpose that they have the right to know something about before the subsidy is provided.

It should not be, as my statement says, a pig-in-a-poke approach. It should not be import restrictions with a vague hope, a general expectation, that the industry will use these import restrictions to buy adjustment time for some adjustment effort which the public is not informed about.

We do not have a pig-in-a-poke approach with respect to adjustment assistance to firms, workers and communities under the so-called adjustment assistance provisions of the trade legislation. By the same token, we should not have a pig-in-a-poke approach with respect to adjustment assistance, which import restrictions really are, to industries as a whole.

I share your view regarding the implied further intrusion of Government into the private sector of the economy, but let us not forget that when the Government imposes import restrictions it is indeed intruding into the private sector of the economy.

Senator MOYNIHAN. No question about it.

Mr. STEINBERG. Let us be sure of what we are doing, and why we are doing it.

Senator MOYNIHAN. It is always the fundamentalists who are the most primitive, let us say, the laissez-faire types, that are most insistent upon this type of interference.

Let me ask you this, Mr. Steinberg. What is a pig in a poke?

Mr. STEINBERG. That is a situation where you adopt a course of action without really——

Senator MOYNIHAN. That is the imagery. I am asking what is a pig in a poke?

Mr. STEINBERG. Where you choose—you mean the original definition, the generic definition of it?

Senator MOYNIHAN. If a pig in a poke were in this room, what would it be?

Mr. STEINBERG. Where you choose, where you make a choice without being sure—maybe you could define it, sir.

Senator MOYNIHAN. I would not ask you if I could. We do not come up here for information. We come here to display our own knowledge. It is almost lost in rural imagery; a poke sack is just a general purpose sack and you carry things around in the poke sack.

A pig in a poke is when people would carry a small pig to market in a poke sack. The idea is, if you see something wiggling in there, you assume it is a pig and assume it is a good one, but it might not be a pig at all and it might not be a good one. You do not buy a pig in a poke. You do not buy a pig in a poke on policy.

With that uplifting and positive note, sir——

Mr. STEINBERG. I knew I could depend on you, which is why I deferred to you on this.

Senator MOYNIHAN. Thank you, Mr. Steinberg. Your testimony is relevant and helpful to this committee.

[The prepared statement of Mr. Steinberg follows:]

Statement of David Steinberg, President, U.S. Council for an Open World Economy, Inc.

Testimony of David J. Steinberg, President, U.S. Council for an Open World Economy, in hearings on the multilateral trade negotiations, before the Senate Finance subcommittee on international trade, February 22, 1979.

(Summary: The main point made in this testimony is that no special trade controls should be established on legitimate imports except as part of coherent adjustment strategies addressing the real problems and needs of the damaged industries. This has never been the policy of the United States or any other country, or a requirement of the General Agreement on Tariffs and Trade. Nor does this reform appear to be included in the newly negotiated multilateral trade agreement.)

The U.S. Council for an Open World Economy is a private, nonprofit organization engaged in research and public education on the merits and problems of achieving an open international economic system in the overall public interest. The Council speaks for no private, commercial interest, only for what its Board of Trustees regards as the total national interest in this policy area.

The Council supports freer and fairer international trade, indeed advocating attainment, with deliberate speed, of the most open and most equitable world trading system. It also advocates effective adjustment strategies to backstop such a policy. The Council would like to see the current trade negotiations generate major progress toward this international economic objective.

Although the Council is very much interested in all the issues covered by these negotiations and by the subcommittee's press release of February 8, 1979, this testimony is limited to the "safeguard" action which importing countries may take in response to injurious import competition--an issue to which the Council has given considerable attention.

THE "SAFEGUARD" ISSUE

There is no indication that a basic flaw in "safeguard" policy will be corrected in the current negotiations. This flaw is the absence of a requirement that no trade restrictions of any kind may be imposed to assist an industry seriously injured by legitimate imports *except* as part of (and if found indispensable to) a coherent, balanced, industry-adjustment strategy addressing the real problems and needs of that industry. Such a strategy should be developed by the industry, approved by the government, and monitored by the government to ensure that these aids at public expense fully advance the public interest and effectively serve the adjustment objective for which they are intended. The adjustment strategy should include reassessment of all government policies materially affecting the industry to make sure that none of these policies impedes effective adjustment and to determine the need for special assistance in these policy areas.

Industry adjustment should not, as now, be a vague hope, a result that is passively expected from the beneficiary of the import restrictions which are the only industry-wide remedy provided under the safeguard provisions of the trade legislation. This approach is something akin to a "pig in a poke." What the industry does with the adjustment time provided by trade restrictions should be the subject of a publicly delineated commitment. The government does not permit a pig-in-a-poke approach in adjustment assistance to firms, workers and communities; it should not do so in import relief—in essence a form of adjustment assistance—to import-impacted industries. Thus, there should be no textile import restrictions without a coherent textile policy, no steel import restrictions without a coherent steel policy, and so forth.

Failure to move along these lines would be an error of omission. There also appears to be an error of commission in the proposed safeguard provisions—namely, permitting selective, discriminatory action against imports from particular countries when these imports are deemed the cause of the serious injury that is found to have occurred. To permit selective action against imports from some countries (but not all as now required) in cases where the issue is not unfairness of trade but rather injury to a domestic injury from legitimate imports would penalize exporters legitimately making the most of their opportunities in the importing country. Moreover, it could open the way for import controls not totally related to the industry situation for which relief was found necessary—that is, for ulterior motives involving the exporting country's trade or other policies. Permitting discriminatory import controls would be a Pandora's box.

Requirement of an industry-adjustment strategy as the framework for import controls should also extend to "buy national" policies in government procurement (except where "buy national" policies may be necessary to deal with national emergencies such as a serious economic depression). It should also extend to the use of import controls for national-security purposes. The U.S. could have prevented or at least alleviated the present energy problem if a quarter century ago the national-security clause written into the trade legislation had required a coherent industry-development strategy as the framework for any import controls considered essential for national-security purposes. Twenty years ago the government imposed oil import controls but without a coherent oil policy aimed at strengthening this sector of the mobilization base. This flaw in the national-security clause still exists—making the national-security clause a threat to national security in the sense that simplistic recourse to import control tends to divert attention from the search for real solutions to real security needs.

Although special efforts to assist the developing countries are urgently needed, it is not clear how import restrictions against developing countries in import-injury cases can be avoided or ameliorated where imports from such sources are substantial without impairing the adjustment effort of the domestic industry found to require import restraint to provide adjustment time. Help for the developing countries would best be achieved through the adjustment-strategy reform proposed in this testimony, inasmuch as this reform would aim at the earliest removal of whatever trade restrictions are necessary.

Senator MOYNIHAN. With that, I think all our witnesses have appeared and the committee will now adjourn.

[Thereupon, at 2:25 p.m., the subcommittee recessed, to reconvene at the call of the Chair.]

[By direction of the chairman, the following communications were made a part of the hearing record:]

STATEMENT OF JOHN J. NEVIN, CHAIRMAN OF THE BOARD, ZENITH RADIO CORP.

The purpose of this statement is to respond to the Subcommittee's request for comments with respect to antidumping legislation. The statement will summarize the history of the television dumping case and present Zenith's recommendations and comments.

In large part, the history of the television dumping case is not subject to challenge. Zenith has, therefore, submitted to the Counsel of the Trade Subcommittee copies of the documents from which its assertions with respect to history have been derived, rather than lengthening this statement with supporting material.

HISTORY OF THE TELEVISION DUMPING CASE

1. In March of 1968, American television manufacturers submitted a dumping complaint to Treasury. Treasury deliberated over the complaint for almost three years before advising the Tariff Commission (later the International Trade Commission) in December of 1970 that Japanese television receivers were being dumped in the United States. In March of 1971, the Tariff Commission found that the U.S. television industry was being injured by the dumping.

A. The Tariff Commission concluded that the sellers of dumped Japanese television receivers had, for the most part, undersold domestic manufacturers and had, thus, contributed significantly to the declining prices of domestically-produced television receivers.

B. Declining prices and Treasury's delay in handling the dumping complaint had a severe financial impact on domestic producers. In each of the years, 1968, 1969 and 1970, over one-half of the fifteen or sixteen American television manufacturers incurred losses. Had the domestic producers not reduced their prices to compete with those of dumped imports, they would have been driven from the American television market as completely as they earlier had been driven from the American radio market.

2. Upon receiving notice of the injury finding, the Customs Service, which reports to Treasury, became responsible for determining and collecting television dumping duties in the amount of the difference between the "purchase price" of imported Japanese television sets and their "foreign market value."

A. Between March of 1971 and March of 1972, approximately $1 million of dumping duties was assessed against television receivers imported from Japan.

B. In March of 1972 the assessment of antidumping duties on Japanese television receivers mandated by law was stopped. The cessation was not announced at the time, and has not since been explained.

3. In 1976, the U.S. International Trade Commission undertook to investigate television dumping. Treasury, contending that the enforcement of antidumping laws was its sole responsibility, refused to grant access to Customs dumping files to ITC investigators. In September of 1976, the Secretary of the Treasury wrote to the Commission to explain the reasons for Treasury's refusal to cooperate.

A. With reference to the television dumping case, the Secretary said: "As required by the Act, dumping duties are being, and will continue to be, assessed on merchandise subject to the finding so long as it is sold at less than foreign market value or, as appropriate, constructed value."

B. At the time the letter was written, four and one-half years had elapsed since Treasury had last assessed a television dumping duty.

4. In its early efforts to determine television dumping duties, Customs assumed that the purchase price of receivers imported from Japan had been accurately declared on documents submitted at the time of importation. In early 1977 an American television importer disclosed to Customs that it and its Japanese supplier had been involved in a "double pricing" scheme in which one price was reported to Customs when the actual or true price was in fact, lower.

A. A subsequent report to the Commissioner of Customs noted that "such a practice effectively reduces or eliminates dumping duties." The report advised the Commissioner that an inspection of public records in the Zenith antitrust case in Philadelphia had disclosed other instances of double pricing and that trips to the field "revealed that additional importers were involved in double pricing."

B. The same report to the Commissioner of Customs noted that "... a massive inquiry of large importers of TV's ... revealed rebate schemes as well as other practices directed to the masking of potential antidumping duties."

C. In March of 1978, the U.S. Customs Service turned over to the Criminal Division of the Department of Justice the evidence it had accumulated in its investigations of television rebate and kickback schemes. Justice reportedly has since convened grand juries to consider the matter.

5. The discovery that the purchase prices declared on Customs documents were inaccurate led Customs intensively to review the reliability of the information it had received with respect to foreign market value.

A. A senior Customs Officer announced the results of that review in considerable detail in a conference held for attorneys representing importers and Japanese television manufacturers. He summarized the findings with the sentence: "In short, we viewed the industry as a whole, and concluded that the information furnished in regard to foreign market value was unacceptable."

B. In testimony before the House of Representatives Subcommittee on Trade, Treasury's General Counsel stated that Customs had concluded that for the period from March of 1972 to January of 1975, only one of the Japanese television manufacturers had submitted information that had been found to be complete and reliable.

6. The Antidumping Act of 1921 defines "foreign market value" as "the price ... at which such ... merchandise is sold ... in the usual, wholesale quantities and in the ordinary course of trade. ..." Japan assesses a commodity tax on television receivers. The tax is levied on the price "... for sales to all purchasers in ordinary wholesale quantities and in the ordinary course of wholesale trade. ..."

From these definitions, Customs concluded it could establish foreign market value with speed and accuracy by using the values the Japanese manufacturers themselves had assigned to their home market television sets in making tax payments to their government.

A. By December of 1977, the commodity tax approach had been reviewed and approved by the appropriate legal officers of both Customs and Treasury.

B. In mid-March of 1978, Customs initiated action to assess, on March 31, 1978, some $400 million in television dumping penalties covering the five-year period from April of 1972 to January 1977.

7. On March 27, 1978, Minister Yoshio Kawahara delivered to the Treasury Department a copy of a note that strongly protested the method Customs had used to establish dumping duties. Following the meeting with Kawahara, Treasury decided to limit assessments to $46 million covering sets imported during the April 1972 through June 1973 period.

A. On March 30, 1978, telegrams were sent to all U.S. Customs field offices directing that dumping assessments relating to shipments made subsequent to June 1973 be deleted from notices that had previously been distributed for posting the next day. The necessary deletions were made by hand by Customs field personnel before the bulletins were posted on March 31, 1978.

B. Before the Customs effort to assess $400 million was aborted, the Commissioner of Customs was asked to provide an impact statement with respect to the proposal. In his written response he said: "In conclusion, I would strongly recommend against any consideration of delaying the completion of the liquidation process of the entries under consideration." He was over-ruled.

8. Following the March action attorneys from the Customs Office of Regulations and Rulings were asked to hold disclosure conferences for importers, Japanese television manufacturers and Japanese Government officials. In an April 1978 report to the Assistant Commissioner of Customs the attorneys expressed concern that the Japanese Government officials seemed to be of the opinion that the March 31 assessment had resulted from Congressional pressure and that Treasury did not expect that the $46 million assessment ". . . in any way represents a final ascertainment of the liability due and owing."

A. In the report the Customs attorneys stated: ". . . those affected anticipate that the assessed amount will be mitigated through informal government-to-government negotiations, or relatively informal contacts between manufacturers and Treasury."

B. In July of 1978 the legal advisory and review functions assigned to the Customs Office of Regulations and Rulings and the recommendations function with respect to dumping cases that had been assigned to the Commissioner of Customs were transferred to Treasury's Office of Chief Counsel.

9. In December of 1978, Treasury's General Counsel sought the support of Congressmen Charles Vanik and Dan Rostenkowski for a proposal to settle the television dumping case for about $50 million. Dumping duties for March 1973–January 1977 period have been estimated to total over $400 million.

Dumping duties for 1977 and 1978 have been estimated to total an additional $200 million. Thus, the settlement proposal would have provided less than ten cents on the dollar.

It was also suggested that the Treasury Department would settle the civil penalties that might be assessed for possibly fraudulent failure to disclose rebates and kickbacks for an additional $5 to $10 million. The law provides that such penalties can be in amounts up to the full value of the goods imported. The possible civil penalties on that basis would approach $200 million.

Congressmen Vanik and Rostenkowski flatly rejected the proposal.

A. After months of disclosure conferences and protest meetings, Treasury had set a November 27, 1978 deadline for payment of the $46 million that had been assessed on March 31, 1978. That deadline was extended to December 27, 1978 and then extended again until January 26, 1979. The most recent extension has set a March 12 due date.

B. The only collection that has been made is $5.5 million that was paid by Sears in order to avoid missing a due date that was subsequently extended.

RECOMMENDATIONS

Zenith has four recommendations with respect to antidumping legislation. The recommendations and rationale leading us to make those recommendations follow:

1. Responsibility for enforcement of antidumping laws should be reassigned from Treasury.

During the last decade Treasury's responsibilities in the diplomatic arena have left Treasury completely unable and/or unwilling to enforce this country's antidumping laws. The transfer of key enforcement functions from Customs to Treasury's Office of Chief Counsel has virtually eliminated the independence of Customs as a law enforcement agency. That independence should be reestablished and Customs itself reassigned preferably to a Department of Trade but possibly to a reconstituted International Trade Commission.

2. The assessment of estimated dumping penalties immediately upon a finding of injury should be required.

In the television case importers were required to post a 9% bond beginning in 1971. The bond was increased to 20% in 1977 when it was found that television dumping had increased in severity. The bonding, however, has provided no protection whatsoever to the domestic industry. Upon an injury finding, Customs should be required to assess an estimated dumping duty with the provision that an importer would obtain a refund with statutory interest if it were later determined the dumping finding has been in error or the dumping assessment had been excessive.

3. Customs should be specifically directed to use the best information available in assessing dumping penalties when confronted by delay and/or deceit in obtaining foreign market value data from importers or foreign manufacturers.

The 10-year long history of deceit and delay in the television case makes it clear that Customs' current dependence on the willingness of importers or foreign manufacturers to submit timely and accurate data is intolerable. The magnitude of the problem would be somewhat reduced by the early imposition of estimated dumping duties. We would recommend, however, that clear direction be given to Customs to base assessments on the best information available if confronted with deceit or delay problems.

4. Domestic manufacturers should be encouraged to participate in the enforcement of antidumping laws.

Dumping is as anticompetitive as any other form of predatory pricing. We recommend that the Congress take specific action to make the Antidumping Act of 1916 a part of this country's antitrust laws and thus improve the ability of domestic companies to recover triple damages for injury associated with dumping.

COMMENTS

The $46 million dumping penalty assessed by Treasury suggests that during the 1972-to-1973 period, the average Japanese television set had been imported into the United States at about $30 under its fair market value. A $30 advantage at the time of importation gave the Japanese television sets a retail price adantage of about $50. That price advantage came about only because importers had been able to violate American antidumping statutes with impunity.

No American industry has been more characterized in recent years by financial losses, employee layoffs and plant shutdowns than has been American television industry. Producers as widely known as Admiral, Philco, Motorola, Magnavox and Warwick have been forced into liquidation or acquisition. General Electric sought but failed to obtain approval to merge its television business with that of Hitachi of Japan.

The cause of the economic turmoil has been dumping, not inept American management. Ford Motor Company, Motorola, General Electric and Rockwell International have impressive records of efficiency and profitability in other industries. Each, however, incurred sizable losses in the American television market.

If a firm is to prosper or even survive in the American enterprise system, it must be able to invest in laboratories to improve technology and in plant and equipment to improve productivity. The funds required to support these investments must come either from corporate profits or from investors who believe that their investments will generate an adequate future return. An industry confronted with the predatory pricing associated with the dumping can neither earn the profits nor obtain the investor confidence needed to finance those investments.

Dumping has already produced economic chaos in the American television industry and in the American steel industry. The American semiconductor, computer and automobile industries are today, in varying degrees, threatened with that kind of chaos. Unless this country demonstrates the ability to enforce its antidumping laws, dozens of other American industries will be left exposed to assaults like that which has been mounted against the U.S. television industry.

ZENITH RADIO CORP.,
Glenview, Ill., April 25, 1979.

Hon. ABRAHAM A. RIBICOFF,
Russell Senate Office Building,
Washington, D.C.

DEAR SENATOR RIBICOFF: In connection with its review of implementing legislation associated with the MTN, the Senate Subcommittee on International Trade is now considering possible changes in American antidumping laws.

The May issue of the University of Notre Dame Law School's Journal of Legislation will include an article entitled "Enforcing the Antidumping Laws: The

Television Dumping Case" that I have written.* Some sixty footnotes have been used to identify documents that support assertions of fact included in the article. We are making available to the staff of the Senate Subcommittee on International Trade copies of each of the documents referred to in the footnotes so as to provide the members of the Committee and their staff with easy access to the source material itself.*

I believe that the article demonstrates that the employees and stockholders of the American television industry have been seriously and unfairly injured as a result of this country's failure, for more than a decade, to enforce its antidumping laws in the television case.

In a day or two, we will submit to you and to the staff of the Subcommittee our suggestions for remedial legislation that would enable an American industry, adversely affected by dumping, to obtain timely relief in the Customs Court. The proposed legislation would eliminate the intolerable administrative delays that have led to so much employee and stockholder injury in the television case.

We are hopeful that you will give consideration to the facts and views expressed in the article and to our suggestions with respect to remedial legislation.

Yours very truly,

JOHN J. NEVIN,
Chairman of the Board and Chief Executive Officer.

STATEMENT OF THE CALIFORNIA AVOCADO COMMISSION

SUMMARY

Implementing legislation for the Multilateral Trade Negotiations should give the President authority to take emergency unilateral safeguard action in order to prevent possible serious injury to domestic producers of perishable crops.

STATEMENT

This statement is submitted on behalf of the California avocado industry by the California Avocado Commission. The Commission represents all producers and marketers of avocados in the state of California. California produces approximately 80 percent of the avocados grown in the United States.

The California Avocado Commission recognizes the importance of the new safeguards code to U.S. agriculture.

Its provisions are designed to achieve better regulation of import restrictions applied by countries protecting their domestic producers, thereby easing export opportunities for U.S. products.

The Commission wishes to address the need for implementing legislation which will provide emergency safeguard authority for perishable crops. Under current U.S. law, the President has no domestic authority to take emergency unilateral safeguard action rapidly enough to prevent potentially serious injury to domestic producers of perishable crops. The General Agreement on Tariffs and Trade (GATT) Article XIX and the new safeguards code permit rapid injury investigations and the establishment of provisional measures in "critical circumstances". In such critical circumstances, no prior consultation is required. Therefore, the MTN implementing package should give the President authority to temporarily restrict imports of perishable commodities if the International Trade Commission (ITC) or other designated body determines that the particular commodity is being imported in such increased quantities and under such conditions as to threaten serious injury to domestic producers of like or directly competitive products. The legislation should provide for the monitoring of perishable commodities imported; daily or weekly tabulation of import statistics as necessary; and rapid injury investigations by the ITC or the designated body upon request by either the President or a member of the affected industry.

Specifically, the California Avocado Commission suggests that the following points be incorporated in the implementing legislation:

1. The criteria of GATT, Article XIX and the safeguards code must be used to determine the existence of a threat of injury. This determination should be based upon objective factors. Increased imports must be the result of unforeseen developments and of obligations incurred by the U.S. under GATT.

2. The Secretary of Agriculture should keep informed of the market outlook and trends for perishable crops facing significant import competition. If indica-

*The documents were made a part of the committee file.

tions of injurious import competition are present, USDA should be required to monitor imports of the commodity or notify the President that such monitoring is infeasible. The President may then direct monitoring to be done by the Commissioner of Customs in order to provide daily reports of the volume of imports during a specified marketing period. Accurate up-to-date information on U.S. domestic prices and levels of production of the particular perishable commodity should also be made available by USDA.

3. The Secretary of Agriculture should report any imminent threat of injurious import competition to the President. The President should order an immediate investigation by the ITC which should report its findings to the President within fifteen (15) working days. If unable to do so, a previously organized standing body of officials composed of one representative from each of the Departments of Agriculture, State, Commerce, and Labor and the Office of the Special Trade Representative should be empowered to conduct the investigation.

4. A producer of a perishable agricultural commodity may file a petition for emergency import relief with the ITC at any time in accordance with Section 201(a)(1) of the Trade Act of 1974. The ITC or other standing body, in consultation with the Secretary of Agriculture, shall decide if there is reasonable evidence of injurious import competition within ten (10) calendar days of the filing. If reasonable evidence exists, the investigation shall continue. A final report shall be made to the President within an additional fifteen (15) working days.

5. The ITC or other standing body should be required to give public notice of its investigations. Interested parties may submit information through hearings or other means as are feasible in the time frame permitted.

6. The President may immediately impose quantitative restrictions or additional charges on imports in such a manner and for such a period of time to remedy the situation if, after considering the final report of the ITC or other body, he determines that domestic producers are threatened with serious injury.

7. Perishable agricultural commodities should be defined as: products which generally cannot be stored for more than ninety (90) days in commercial practice.

In conclusion, the new safeguards code represents an important change from the existing GATT provisions. The California Avocado Commission recommends the inclusion of implementing legislation embodying the above points in order to provide adequate protection to U.S. producers of perishable commodities.

Statement of the California-Arizona Citrus League

Summary

Implementing legislation for the Multilateral Trade Negotiations should give the President authority to take emergency unilateral safeguard action in order to prevent possible serious injury to domestic producers of perishable crops.

Statement

This statement is submitted on behalf of the California-Arizona Citrus League whose membership represents handlers and growers of more than 90 percent of the California-Arizona citrus fruit produced and marketed in fresh and processed form.

The California-Arizona Citrus League recognizes the importance of the new safeguards code to U.S. agriculture. Its provisions are designed to achieve better regulation of import restrictions applied by countries protecting their domestic producers, thereby easing export opportunities for U.S. products.

The League wishes to address the need for implementing legislation which will provide emergency safeguard authority for perishable crops. Under current U.S. law, the President has no domestic authority to take emergency unilateral safeguard action rapidly enough to prevent potentially serious injury to domestic producers of perishable crops. The General Agreement on Tariffs and Trade (GATT) Article XIX and the new safeguards code permit rapid injury investigations and the establishment of provisional measures in "critical circumstances". In such critical circumstances, no prior consultation is required. Therefore, the MTN implementing package should give the President authority to temporarily restrict imports of perishable commodities if the International Trade Commission (ITC) or other designated body determines that the particular commodity is being imported in such increased quantities and under such conditions as to threaten serious injury to domestic producers of like or directly competitive products. The legislation should provide for the monitoring of perishable commodities imported; daily or weekly tabulation of import statistics as necessary; and rapid injury investigations by the ITC or the designated body upon request by either the President or a member of the affected industry.

Specifically, the California-Arizona Citrus League suggests that the following points be incorporated in the implementing legislation:

1. The criteria of GATT, Article XIX and the safeguards code must be used to determine the existence of a threat of injury. This determination should be based upon objective factors. Increased imports must be the result of unforeseen developments and of obligations incurred by the U.S. under GATT.

2. The Secretary of Agriculture should keep informed of the market outlook and trends for perishable crops facing significant import competition. If indications of injurious import competition are present, USDA should be required to monitor imports of the commodity or notify the President that such monitoring to be done by the Commissioner of Customs in order to provide daily reports of the volume of imports during a specified marketing period. Accurate up-to-date information on U.S. domestic prices and levels of production of the particular perishable commodity should also be made available by USDA.

3. The Secretary of Agriculture should report any imminent threat of injurious import competition to the President. The President should order an immediate investigation by the ITC which should report its findings to the President within fifteen (15) working days. If unable to do so, a previously organized standing body of officials composed of one representative from each of the Departments of Agriculture, State, Commerce, and Labor and the Office of the Special Trade Representative should be empowered to conduct the investigation.

4. A producer of a perishable agricultural commodity may file a petition for emergency import relief with the ITC at any time in accordance with Section 201 (a)(1) of the Trade Act of 1974. The ITC or other standing body, in consultation with the Secretary of Agriculture, shall decide if there is reasonable evidence of injurious import competition within ten (10) calendar days of the filing. If reasonable evidence exists, the investigation shall continue. A final report shall be made to the President within an additional fifteen (15) working days.

5. The ITC or other standing body should be required to give public notice of its investigations. Interested parties may then submit information through hearings or other means as are feasible in the time frame permitted.

6. The President may immediately impose quantitative restrictions or additional charges on imports in such a manner and for such a period of time to remedy the situation if, after considering the final report of the ITC or other body, he determines that domestic producers are threatened with serious injury.

7. Perishable agricultural commodities should be defined as: products which generally cannot be stored for more than ninety (90) days in commercial practice.

In conclusion, the California-Arizona Citrus League recommends the adoption of implementing legislation embodying the above points in order to provide adequate protection to U.S. producers of perishable agricultural commodities.

Additionally, the California-Arizona citrus industry is very hopeful of obtaining a concession from the European Economic Community (EEC) on fresh oranges. We know that this is a matter of high priority to members of the United States Senate in light of S. Res. 89, passed in 1971 (attached). Elimination or reduction of the EEC's discriminatory tariff preference for fresh citrus is of critical importance to the California-Arizona citrus industry.

[S. Res. 89, 2d Cong., 1st sess.]

[Report No. 92-50]

RESOLUTION expressing the sense of the Senate with respect to the prompt removal of discriminatory preferences on citrus fruits granted by the European Economic Community, and action to be taken by the United States if such discriminatory preferences are not promptly removed

Whereas discrimination in international trade is contrary to the trading interests of all nations; and

Whereas proliferation of discriminatory trade arrangements by the European Economic Community is harmful to the world trading system; and

Whereas the European Economic Community has recently accorded preferential tariff treatment with respect to citrus fruit from Tunisia, Morocco, Spain, and Israel, to the detriment of United States exports; and

Whereas the European Economic Community has received preferential concessions from Tunisia, Morocco, Spain, and Israel in return for its discriminatory preferences, also to the detriment of United States exports; and

Whereas these discriminatory preferences violate trade agreements and impair concessions granted to the United States in trade agreements negotiated under the Trade Agreements Program; and

Whereas the Congress of the United States has enacted section 252 of the Trade Expansion Act of 1962 and section 338 of the Tariff Act of 1930 to provide remedies for injury to United States export trade arising from such discriminatory preferences: Now, therefore, be it

Resolved, That it is the sense of the Senate that the President shall promptly make every effort to obtain the removal of the discriminatory import preferences maintained by the European Economic Community with respect to citrus fruits and, should such efforts not succeed, the President shall take appropriate remedial steps within sixty days from the date of this resolution against the European Eonomic Community pursuant to section 252 of the Trade Expansion Act of 1962 or section 338 of the Tariff Act of 1930.

STATEMENT OF THE INTERNATIONAL LONGSHOREMEN'S & WAREHOUSEMEN'S UNION, PREPARED IN HAWAII BY ILWU REGIONAL OFFICE AND LOCAL 142

Our Union represents the employees of the three remaining companies which operate pineapple plantations and canneries in Hawaii. We urge you to adopt this resolution.

Within the past decade, hundreds of ILWU members in Hawaii have lost jobs and earnings because union-made Hawaiian pineapple has been displaced in the market by foreign pineapple which enjoys the unfair advantages of intolerably low wages, freedom from environmental protection costs and lower ocean shipping costs on foreign vessels.

The island of Molokai was especially hard hit by the shutdown of Dole's plantations there in 1975.

More recently, the remaining three pineapple companies (Dole, Del Monte and Maui Land & Pineapple) have apparently been profitable and have given no sign that they plan to reduce tonnage. Amfac has said it may go back into pineapple on Kauai. This favorable situation could be upset however, by a big increase in low-cost foreign imports.

Wage rates for regular workers in Hawaii's industry range are just enough to sustain a modest standard of living, wholesome communities and a rising level of education for the younger generation—ranging from $4.88 per hour up to $7.225 for skilled tradesmen. It is neither desirable nor possible for American workers to reduce their wages to levels competitive with Taiwan, Thailand or the Philippines.

Even now, the 8 percent tariff on foreign pineapple does not adequately protect Hawaii's industry or workers from the impending threat of massive imports from Thailand. The 8 percent tariff is inequitably low compared to tariffs on other imported fruits which range as high as 35 percent.

The reduction of an already minimal tariff from 8 percent to 1 percent (ad valorem) will give that much more of a "profitable encouragement" to foreign producers to make further inroads into our domestic market. This is significant in view of the tremendous buildup of processed pineapple production in tropical countries, especially in Thailand.

Thailand, reportedly, is launching a bid to become the world's leading pineapple exporter and the U.S. is certain to be a target market for much of their production, which is expected to reach 180,000 tons by the early 1980's. The lowering of our U.S. tariff will be an open invitation to the foreign fruit market in the U.S. at the expense of domestic pineapple.

Hawaii has a tremendous investment in the development of the pineapple industry and U.S. market. While, at one time Hawaii was the world leader in pineapple production, Hawaii's exports today account for only 6. percent of the total U.S. pineapple consumption. More than half of the pineapple consumed in the U.S. is foreign grown.

In Hawaii, 43,000 acres of land are devoted to producing some 695,000 tons of pineapple annually. Most of this production is processed as canned pineapple and juice and 83,000 of this tonnage is sold in the fresh market. This annual production has a value of $160 million.

Some 4,200 workers are employed year-round on the plantations and in canneries. Another 7,800 workers swell these ranks at the peak of the "pineapple season". Pineapple workers receive some $50 million in wages and the industry provides indirect employment to a host of related industries.

Less tangible, but equally important, is the contribution of the pineapple industry to maintaining the aesthetic beauty of our open space and the attractiveness of our State to visitors.

Pineapple shipments also represent backhaul cargo for ocean transportation systems which means lower transportation costs for tonnage shipped to Hawaii. Of the eastbound containers, more are empty than full. However, approximately 60 percent of the containers eastbound from Hawaii with cargo are carrying Hawaiian pineapple.

Unlike most farming states on the mainland, Hawaii does not have the choice of several major crops. If we should lose sugar or pineapple production, there are no known alternative uses for the land which would be of comparable benefit to the economy and the overall welfare of our State.

We urge you to pass this resolution asking that pineapple be excepted from tariff reductions.

INTERNATIONAL LONGSHOREMEN'S & WAREHOUSEMEN'S UNION,
Washington, D.C., February 15, 1979.

ROBERT S. STRAUSS
Special Representative for Trade Negotiations,
Washington, D.C.

DEAR AMBASSADOR STRAUSS: As Washington Representative for the ILWU, I have been assigned by the ILWU officers to attend the Department of Labor advisory committee on trade as the ILWU delegate. Our office has indicated at previous meetings our policy on sugar.

At this time I would like to forward to you three pieces of material from our ILWU Hawaiian regional office. The pieces include our testimony presented to the state of Hawaii's Senate committee on agriculture, additional information about Hawaii's pineapple industry, and a letter addressed to Governor George Ariyoshi from Tommy Trask, our Hawaiian regional director.

The Senate of the state of Hawaii adopted a resolution which resolved as follows:

"*Be it resolved by the Senate of the Tenth Legislature of the State of Hawaii, Regular Session of 1979, the House of Representatives concurring,* That the President of the United States and the Special Representative for Trade Negotiations be, and they are, hereby requested to except fresh and processed pineapple products from tariff reduction in the current Multilateral Trade Negotiations; and

"*Be it further resolved,* That Hawaii's delegation to the United States Congress are urged to continue to oppose any reduction in the United States import duty on fresh and processed pineapple products; and

"*Be it further resolved,* That duly certified copies of this Concurrent Resolution be transmitted to the President of the United States; Ambassador Robert S. Strauss, the Special Representative for Trade Negotiations, and to each member of Hawaii's congressional delegation."

In addition to sending you the above material, we look forward to the opportunity to present our position before the labor advisory committee at which your office will present the full trade package before it goes to the Senate.

We'd also like to request an immediate meeting with your agriculture negotiating people for the purpose of developing our position.

Sincerely,

PATRICK F. TOBIN,
ILWU Washington Representative.

FURTHER INFORMATION ABOUT HAWAII'S PINEAPPLE INDUSTRY

Hawaii suffered a loss of several pineapple plantations in recent years because of the increase in competition from foreign producers who enjoy an unfair advantage over Hawaii in the form of low wages, low-cost ocean freight rates on foreign bottoms, and freedom from the expenses of environmental controls.

The reduction of an already minimal tariff of three percent to one percent (ad valorem) will give that much more of a "profitable encouragement" to foreign producers to make further inroads into our domestic market with foreign pineapple imports. This is significant in view of the tremendous buildup of processed pineapple production in tropical countries of the world, especially Thailand.

Thailand, reportedly, is launching a bid to become the world's leading pineapple exporter and the U.S. is certain to be a target market for much of their production, which is expected to reach 180,000 tons by the early 1980's. The lowering of our U.S. tariff will be an open invitation to the foreign fruit market in the U.S. at the expense of domestic pineapple.

Hawaii has a tremendous investment in the development of the pineapple industry and U.S. market. While, at one time Hawaii was the world leader in pineapple production, Hawaii's exports today account for only 46.4 percent of the total U.S. pineapple consumption. More than half of the pineapple consumed in the U.S. is foreign grown.

In Hawaii, 43,000 acres of land are devoted to producing some 695,000 tons of pineapple annually. Most of this production is processed as canned pineapple and juice and 83,000 of this tonnage is sold in the fresh market. This annual production has a value of $160 million.

Some 4,200 workers are employed year-round on the plantations and in canneries. Another 7,800 workers swell these ranks at the peak of the "pineapple season". Pineapple workers receive some $50 million in wages and the industry provides indirect employment to a host of related industries.

Less tangible, but equally important, is the contribution of the pineapple industry to maintaining the aesthetic beauty of our open space and the attractiveness of our State to visitors.

Pineapple shipments also represent backhaul cargo for ocean transportation systems which means lower transportation costs for tonnage shipped to Hawaii. Of the eastbound containers, more are empty than full. However, approximately 60 percent of the containers eastbound from Hawaii with cargo are carrying Hawaiian pineapple.

As has been apparent in the sugar industry crisis, Hawaii does not have the choice of several major crops as most farming states on the mainland have. If we should lose sugar or pineapple production, there are no known alternative uses for the land which would be of comparable benefit to the economy and the overall welfare of our State.

STATEMENT OF WILLIAM S. SNEATH ON BEHALF OF THE OFFICE OF THE CHEMICAL INDUSTRY TRADE ADVISOR

This statement is in response to the request of the Senate Finance Committee for views on legislation necessary to implement the results of the Multilateral Trade Negotiations. It is given on behalf of the Office of the Chemical Industry Trade Advisor (OCITA) which is a joint effort of the Dry Color Manufacturers Association, The Fertilizer Institute, the Manufacturing Chemists Association, the Society for the Plastics Industry and the Synthetic Organic Chemical Manufacturers Association. The membership of these associations represents virtually all sectors of the U.S. chemical industry and includes most of the chemical companies in the United States. The views expressed here are consistent with those of Industry Sector Advisory Committees No. 5 and 8, representing industrial chemicals and plastics.

The U.S. chemical industry is one of the largest industries and employers in the United States. Its shipments totalled almost $127 billion in 1978. It employs over one million workers. Its exports of $14.6 billion in 1978 were 11.5 percent of total sales and 10.2 percent of all U.S. exports. The positive trade balance was $7.5 billion, an extremely important contribution to the U.S. trade balance which was in deficit by $34.2 billion.

The industry believes that its long experience in international markets has given it a unique understanding of world trading practices including the relative value of tariffs and nontariff barriers, of unfair trading practices, of governmental practices affecting U.S. exports and the relative values of the accomplishments in the Multilateral Trade Negotiations.

As this statement is made to the Senate Finance Committee, the lack of final details of the Multilateral Trade Negotiations presents a problem. Virtually all of the codes have important sections unresolved. These are incomplete for lack of final agreements on important and contentious issues in the MTN. This statement therefore is a preliminary assessment in response to the need of the Senate for comments in advance of conclusion of the MTN. Developments as the codes are completed may cause the chemical industry to revise the views expressed in this statement.

The chemical industry wishes to inform the Senate Finance Trade Subcommittee that the effect of the tariff negotiations is more important to the chemical industry than the adoption of codes. However, the implementation of the codes both in the United States and by the other GATT participants could be of importance in settling trade problems of the future. The manner of implementation by the United States and by the other countries will be critical as to whether the negotiated codes have been a worthwhile effort.

SUBSIDY/COUNTERVAILING DUTY

The code on subsidies and countervailing duties is extremely important to the U.S. chemical industry. Important changes are occurring in the strucure of the world chemical industries. For example, many of the foreign competitors of American companies are either owned or controlled by governments. Consequently, direct or indirect subsidization is common and a definite factor in chemical markets. Therefore, the chemical industry believes an effective subsidy code, supported by proper implementing legislation and strong administration, is essential to prevent disruption of the U.S. market and displacement of U.S. exports in third world markets.

It appears that foreign policy considerations have historically caused the United States to be reluctant to enforce actively our countervailing duty law. In order for the subsidies code under consideration to be effective, there must be a change in this historical approach. The significant economic structural changes alluded to earlier demand such a change. Our government must become "tough minded' in the administration of its trade laws. Actions against subsidized imports should be taken swiftly. They should be applied in a fair and consistent manner against all offenders.

The subsidy code in its as yet unfinished stage contains a mix of positive and negative factors for the U.S. chemical industry in dealing with subsidization of U.S. chemical imports of the future. The ndustry believes the code's expected provisions can be classified as "positive" or "negative:"

Positives: A flat prohibition against export subsidies; domestic subsidies are recognized to have harmful trade effects; tightened dispute settlement rules; and greater transparency of subsidy practices and administration of CVD laws/regulations.

Negatives: Inclusion of a requirement that subsidized imports cause or threaten injury to domestic producers; imports from nonmarket countries are not dealt with adequately.

The OCITA makes the following recommendations to the Senate Finance Committe to achieve acceptabe implementing legislation:

1. Imposition of countervailing duties where injurious subsidization has been found should be mandatory and not optional. They should be equal to the amount of the injurious subsidy.
2. The injury test criteria should be low level and not present an unreasonable obstacle to countervailing against subsidized imports. (The same low threshold injury test is recommended for insertion in the anti-dumping law)
3. Concessions to developing countries should not become a loophole allowing their subsidized imports to disrupt the U.S. market.
4. The definition of "domestic industry" should be such as to allow producers in one geographic region to be considered an "industry."
5. Exports from state-owned or state-controlled industries should be dealt with explicitly as to prices and cost of production.
6. The time allowed for findings on countervailing duty cases should be short and mandatory.

COMMENTS ON SAFEGUARDS CODE

This code which supplements and improves Article XIX of the General Agreement on Tariffs and Trade could become influential in world chemical trade. The greatest concern of this industry is that disruption by imports in the U.S.

market be dealt with in a fair and even-handed manner. It is necessary that disruptive imports such as those from government-owned industries abroad are dealt with when they are disruptive but have not been found actionable under anti-dumping or countervailing duty laws.

The following recommendations are made with regard to the provisions of the Safeguards Code most important to the U.S. chemical industry.

1. The definition of injury should be narrow enough that market disruption affecting a portion of a U.S. industry be dealt with. (An East coast market may be affected significantly without any effect on the West coast market.)
2. The industry supports the concept that products like or directly competitive with imported products are to be considered as affected. Substitutability of chemicals makes this an important imperative.
3. Determination of injury should be on a product and not corporate basis.
4. Circumstances calling for selective safeguard action should be carefully defined with regard to export constraints, the duration kept limited and notification and consultation provisions clearly set out for maximum transparency.

COMMENTS ON VALUATION CODE

One effect of the valuation code, if approved by the Congress, will be elimination of the American Selling Price (ASP) system of valuation. This method of valuation applies to a large and significant portion of the U.S. chemical industry, namely benzenoid chemicals.

For the industry to support the valuation code, therefore, is to support elimination of ASP. Industry support of this code is contingent upon 1.) a proper conversion of rates, and 2.) proper compensation for elimination of ASP. Only the first contingency is known. Accordingly, the industry reserves its final approval of the code at this time.

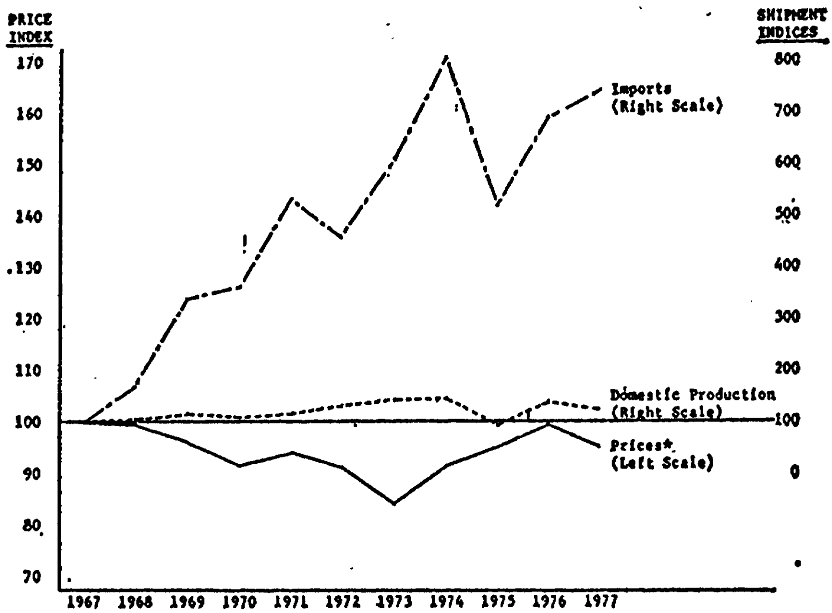
STATEMENT OF THE DRY COLOR MANUFACTURERS' ASSOCIATION TRADE NEGOTIATIONS SUBCOMMITTEE

The Dry Color Manuacturers' Association Trade Negotiations Subcommittee very much appreciate the opportunity to present its comments to you on the impact of the proposed customs valuation code on the United States organic pigments industry. The DCMA Trade Negotiations Subcommittee is composed of domestic manufacturers of organic pigments which account for approximately 90 percent of the organic pigments manufactured in the United States.

Pigments are the insoluble coloring components used in printing inks, coatings (paints), plastics, and a myriad of smaller industries. In 1977, there were approximately 35 producers of organic pigments in the United States employing approximately 6,000 persons. The United States International Trade Commission reported the organic pigment production of these companies was valued at approximately $320 million.

With the large number of firms competing in a market with a total consumption value estimated at only $413 million, it is expected that strong price competition would exist. The International Trade Commission reported the average price of colored toner sold in the United States increased from $2.40 per pound to $4.66 per pound between 1961 and 1977. Based on these data it appears that pigment prices have increased over the past 16 years. However, after the effects of inflation have been removed, a pound of organic color sells for less today than it did in 1961. The following exhibit shows three time-series indices. The first shows domestic selling prices deflated by the Wholesale Price Index for "All Commodities". The second shows domestic production, and the third shows sales of imported pigments in the United States market. All three are based on 1967=100 to show the impact of the tariff reductions of the "Kennedy Round" of negotiations.

THE IMPACT OF KENNEDY ROUND TARIFF REDUCTIONS ON THE ORGANIC PIGMENT MARKET (TSUS 406.70)



*Constant Dollars (Wholesale Price Index "All Commodities" deflator)

The organic pigments industry is extremely sensitive to import competition. Between 1967 and 1972, the United States tariff on organic pigments (TSUS 406.70) declined from 40 to 20 percent ad valorem. This relaxed duty on imports enabled foreign producers to increase their share of the United States market from two to twelve percent between 1967 and 1977. In addition, the increased importation of organic pigments imposed extreme price competition on domestic producers. The preceding exhibit shows that organic pigment prices declined relative to the price index for all commodities sold in the United States—including products which are required to manufacture pigments. This has put a cost/profit squeeze on domestic producers.

We believe the lost market share and decreased profitability has caused the number of Americans employed in this industry to fall short of its potential. If the tariff protection provided by the American Selling Price method of valuation is eliminated, it is expected that a substantial number of the 6,000 jobs associated with organic pigment production in the United States would be forfeited. The reason for this is simple—the majority (80 percent plus in a recent International Trade Commission study) of imports are between related parties. Therefore, the invoice value can be "adjusted" to meet the objectives of the foreign-based parent company. By setting the transaction value low, the importer could minimize its duty payments. This could result in even greater price pressure on domestic producers.

A transaction/constructed value technique is currently utilized in assessing non-competitive benzenoid products (when no American Selling Price data are available). However, we believe this system to have proven less than satisfactory. The multiplicity of chracteristics which determine the selling price or value of an organic pigment can only be established in the marketplace.

Each consumer decides the value of a matrix of properties consisting of color, strength, lightfastness, chemical resistance, and heat stability in determining the price that he is willing to pay for a specific pigment. Thus the free market system determines the value placed on an imported pigment, and hence the duty to be applied. If ASP valuation is eliminated, the importer, and the foreign party to whom he is related, will be able to manipulate the transaction value and the duty paid. This could result in a deterioration of the domestic industry.

The Dry Color Manufacturers' Association, through a survey of its members, found that any substantial tariff reduction would result in layoffs or dismissals. The following exhibit shows these data:

IMPACT OF TARIFF CUTS AND ELIMINATION OF ASP ON EMPLOYMENT
[In percent]

Depth of cuts	Estimate of probable layoffs or dismissals	Percent of sales respondents reporting probable layoffs or dismissals
30 percent	13	69
60 percent	29	96
30 percent and ASP eliminated	24	99
60 percent and ASP eliminated (formula cut)	36	100

The American Selling Price method of valuation has been specifically excluded as a method of valuation in the proposed Customs Valuation Code. Congress must enact legislation to adopt this proposed code. We strongly believe that ASP should be retained for those select industries which would be irrevocably harmed by its elimination.

If our plea for the retention of the American Selling Price method of valuation is futile, the United States producers of organic pigments respectfully request that:

The conversion to ad valorem rates be fair and equitable. The International Trade Commission's report to the Office of the Special Trade Representative was done under severe time constraints. The conversion study, although done in a responsible manner, was based upon data with severe deficiencies and understates the converted rate for TSUS 406.70 (organic colors, lakes, and toners). A number of pigments manufacturers commented to the International Trade Commission in order to bring these errors to the Commission's attention. If these comments have remedied the deficiencies in the conversion, and have been acted upon accordingly, we believe the corrected rate structure to be acceptable; anything below this would be unacceptable. Unfortunately, we do not have the final conversion, and must reserve final comment until it is available.

The United States pigment industry receive compensation for the elimination of ASP. It is the position of this industry that no foreign concessions would offset the harm done by the elimination of ASP and a reduction in the current tariff protection. Therefore, we believe that our prior documentation to the Office of the Special Trade Representative shows that the only viable compensation would be a total exception from tariff reduction.

Concessions such as these cannot be considered adequate compensation for the elimination of ASP. However, it is our hope that Congress consider the specific problems of the pigments industry during their review of the Tokyo Round of the GATT and subsequent enabling legislation.

NATIONAL ASSOCIATION OF MANUFACTURERS,
March 13, 1979.

Hon. ABRAHAM RIBICOFF,
Chairman, Subcommittee on International Trade, Committee on Finance, U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: The National Association of Manufacturers commends the Committee for its prompt attention to the Administration's recommendation that the waiver of the application of countervailing duties to certain imports be extended. We believe the extension of the countervailing duties waiver, as proposed in H.R. 1147, should provide sufficient time for the conclusion of negotiations of an international subsidies code, as well as other essential features necessary to bring the Multilateral Trade Negotiations (MTN) to a successful conclusion. The original purpose of Congress in introducing the countervailing duty waiver procedure in the Trade Act of 1974 was, of course, to help facilitate a successful conclusion of the trade negotiations, particularly regarding subsidies. We believe that this objective can best be achieved by the extension of the waiver at this time.

The manufacturing sector of U.S. industry has a vital stake in the successful conclusion of the MTN. Manufactured goods constitute over two-thirds of the dollar value of U.S. exports. NAM which represents over 75 percent of U.S. manufactured output, regards an improved U.S. trade performance as essential to a strengthened dollar, as well as to a strengthened domestic economy.

The outcome of the MTN will affect both the ground rules and patterns of world trade for the next decade and perhaps for the balance of this century. Tariffs, we understand, are to be reduced on a reciprocal basis among the major trading countries by an average of one-third or more, and this should stimulate world trade and make American exports more price-competitive in many world markets. Even more important than this, however, will be the proposed agreements to eliminate or reduce Non-Tariff Barriers to trade. Failure to conclude such agreements on terms that would assure effectiveness, equity and reciprocity would negate the beneficial effects of trade liberalization by tariff reductions.

NAM strongly favors the strengthening of free market forces as they affect production and trade. Increased government economic intervention has been on the march all over the world. Subsidies, preferential government procurement procedures, technical specifications and standards, import safeguard procedures of a discriminatory or secretive character, the use of governmental corporations and state-trading entities—these are the means by which governments distort markets and discriminate against trade conducted on a private, free enterprise basis. These and other subjects will, for the first time, come under international scrutiny and be subject to agreed rules in codes-of-conduct now being negotiated. These agreements will all be submitted to Congress for approval.

The texts of the final agreements, which are still under negotiation, will be submitted to Congress later this spring. We view these agreements as very important initial steps to control and constrain government intervention in world trade, and we endorse them in principle. After we have had an opportunity to study the texts of the final agreements, we expect and hope to be able to support them—and will do so provided the promise of the provisional drafts can be realized and implemented in the final agreements.

By extending the waiver authority until later this year, Congress can allow the President time to conclude the MTN agreements and submit them to Congress for public discussion and debate. Failure to extend the waiver authority at this time may very well jeopardize over four years of negotiations and preclude the submission of any new trade agreements.

We understand that the Committee is planning hearings shortly, and we would like this letter to become part of the record in connection with those hearings.

Sincerely,

LAWRENCE A. FOX,
Vice President for International Economic Affairs.

NATIONAL ASSOCIATION OF MANUFACTURERS,
March 3, 1979.

Hon. ABRAHAM RIBICOFF,
Chairman, Subcommittee on International Trade, Committee on Finance, U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: The National Association of Manufacturers welcomes this opportunity to present its views on the implementation of the agreements resulting from the Multilateral Trade Negotiations, and requests that this letter be made a part of the record in connection with the hearings on this subject.

The manufacturing sector of U.S. industry has a vital stake in the successful conclusion and effective implementation of the MTN. Manufacturer goods constitute two-thirds of the dollar value of U.S. exports. The NAM, which represents over 75 percent of U.S. manufactured goods output, regards an improved U.S. trade performance as essential to a strengthened dollar, as well as to a strengthened domestic economy.

The Congress, the Executive, and the private sector are about to engage in an extensive debate on the outcome of the MTN. After five years of negotiations with 98 other countries, agreements covering a wide range of trade barriers will be presented for Congressional approval in the form of an implementing package bill. Because of the complexities and the technical nature of these agreements, there is the risk that the general significance of the implementing legislation will be obscured. The essential point, in the view of the NAM, is this: the MTN agreements present an array of potentially powerful tools which permit us to take a variety of measures to dismantle or control government intervention in world trade. The U.S. will decide, through the implementing legislation, if it does in fact intend to do this and is prepared to move vigorously and effectively to this end.

A glance at the deteriorating trade position of the U.S. in the past decade will show the need for a vigorous implementaion of the MTN accords. Last year the U.S. posted a record trade deficit of $28.5 billion, the largest in history. The chief cause was not oil—indeed, the oil deficit improved from 1977 to 1978—but rather in manufactured goods, which posted a deficit of almost $6 billion in contrast with surpluses in previous years. The major trade deficits of the past two years for all merchandise as well as for the manufacturing sector in particular seem to be the continuation of a long-term trend, evident since 1965, toward a weakening trade position. The causes of such weakness are, of course, fundamental, and an examination of them would lead us far beyond the specific subject matter before the Committee today. One key element in strengthening our trade performance, however, is the improvement of access for U.S. goods in world markets.

The Subcommittee has indicated an interest in hearing public comment on an administering agency for the MTN agreements. We believe this issue is crucial to achieving a successful outcome for this country as a result of the overall trade negotiations. Rather than perceiving the subject as relating narrowly to one or another specific code, it would be more appropriate to view this question in the broader context of the full trade package. We must remember that the benefits offered by new trade agreements are only potential—they must be effectively followed-up in order to turn the potential into actual trade benefits. This consideration places a dual requirement on the U.S. Government: (1) to assist U.S. exporters in realizing the increased sales abroad promised by a lowering of foreign trade barriers; and (2) to vigorously and effectively enforce the agreed international standards to assure that U.S. industry is not harmed or disadvantaged by unfair foreign trade practices.

The effective implementation of these dual requirements must rest on a consolidation and integration of government functions and authority in the international trade area. The current system of scattered international trade functions and generally unfocused international economic policy-making and execution is inadequate to this task. We believe that the best solution lies in the consolidation of such functions and authorities into a Department of International Trade and Invesment. An analysis of this proposal was published last November in an NAM Special Report on the "Organization of the Executive Branch for the Conduct of International Economic Policy". The bill (S. 377), which you and other members of the Subcommittee have sponsored, is an appropriate and, we believe, necessary response to this problem. We expect to testify more specifically on this bill in the near future, but believe that its early consideration is all the more important in light of the demands that will be placed on U.S. Government policy-making and execution mechanisms by the follow-up and enforcement of the MTN agreements.

The MTN codes represent a major attempt to control the use of non-tariff barriers (NTBs) in international trade. The NAM considers the MTN codes to be critically important initial steps to control government intervention in world trade through NTBs, and we endorse the codes in principle.

The essential codes to constrain government intervention to distort trade are these: government subsidies, government procurement, technical standards, and import safeguards. Other important areas of concern relate to trademark counterfeiting, civil aircraft and customs valuation. Although all of these subjects are not before the Subcommittee at this time, NAM wishes to note that, taken together, the proposed codes provide the means to help establish the rule of law in international trade.

An important aspect of the codes is transparency, i.e. information crucial to the effective operation of the codes is required to be placed on the record with relevant GATT bodies. For example, trade flows are increasingly affected by secret agreements between industries of different countries. These agreements often place ceilings on import levels, and they are often negotiated with the tacit consent of the governments of the countries involved. (U.S. companies, of course, are barred from such agreements by our anti-trust laws.) In other cases, the government of one country may arrange an understanding with the industry of another country regarding import levels. We think that it is essential that all of these existing industry-to-industry and government-to-industry agreements be notified to the GATT as part of the operation of the safeguards code, as well as any agreements to be negotiated in the future.

As another example, we would cite the necessity for on-the-record information in the area of government purchasing. The amount of the winning bid and the name of the company submitting it should be made public as part of a meaningful application of the government procurement code, and all exceptions to the code should be published.

Other broad areas which should be of concern to the Committee include the role of taxes in export policy. The continuation of the Domestic International Sales Corporation (DISC) should not be affected, either directly or by implication, by the MTN codes or the implementing legislation. Also, the use of a value-added tax should be preserved as an option for the U.S. Such a value-added tax would be fully remitted for U.S. exports, in accordance with present practice of many other GATT members.

There are other important issues involved in MTN implementation which the NAM looks forward to addressing when the final implementing package is made public.

Sincerely,

LAWRENCE A. FOX,
Vice President.

STATEMENT OF GEORGE DEVER, PRESIDENT, AMERICAN PIPE FITTINGS ASSOCIATION

Mr. Chairman, my name is George Dever and I am president of the American Pipe Fittings Association (APFA) which represents domestic pipe fittings manufacturers. I am also with U-Brand Corporation of Ashland, Ohio. Like all manufacturers with foreign competition we are quite concerned with the agreements that will arise from the Multilateral Trade Negotiations in Geneva.

I appreciate this opportunity to share with the Committee the concerns of the American pipe fittings manufacturers in this important trade area. Our members are being increasingly subjected to import competition. We believe there are more and more unfair trade practices in our marketplace, and APFA is currently investigating to develop specific information in this regard.

Our primary concerns with the MTN package can be summarized as follows:

1. Of particular interest to the pipe fittings manufacturers is the proposed Subsidies Code arising from the Geneva negotiations. We see no justification for a Subsidies Code that would require a finding of injury before a countervailing duty would be imposed. Likewise, we oppose the imposition of a "material" injury test in subsidies cases. Nor can the pipe fittings manufacturers agree with the idea that the Subsidies Code should provide special treatment for developing countries. Although developing economies may deserve special consideration, like those represented in the Generalized System of Preferences, we find it impossible to endorse the extension of additional preferential treatment to countries that are becoming major competitors to many American manufacturers.

2. We suggest the provisions of the countervailing duty statute be reviewed during the consideration of implementing legislation for the Multilateral Trade Negotiations. Specifically, we suggest a review of the unfettered discretion the Department of the Treasury possesses in the administration of the statute. We believe their discretion should be limited and we would like to see a clearer delineation of just what Treasury is permitted to do in the administration of countervailing duties. It strikes us that it is particularly important to eliminate the various offsets used by the Treasury Department after countervailing duty findings have been made.

3. In the proposed Safeguards Code the pipe fittings producers oppose any provisions which make it more difficult to secure import relief in "escape clause" cases. The current injury test should not be modified.

4. As a general principle, the domestic pipe fittings manufacturers oppose any provisions in the trade agreement which would compromise the possibility of unilateral action against unfair trade activity.

5. Finally, like other domestic manufacturers who have offered comments on the trade package, we are dismayed that the Licensing Code does not take decisive steps to eliminate unfair and overly restrictive licensing practices.

In conclusion, we are pleased with your thoroughness in examining the ramifications of the trade agreement on domestic industry. I appreciate the opportunity to testify on behalf of the American Pipe Fittings Association.

Thank you.

Statement of Joseph Casey, Chairman, Import Task Force Valve Manufacturers Association

My name is Joseph Casey and I am chairman of the Import Task Force of the Valve Manufacturers Association. The Valve Manufacturers Association membership numbers seventy American valve manufacturers and accounts for approximately 80 percent of the total United States industrial valve capacity. The valve manufacturing industry has annual sales of approximately $1.7 billion and employs over 50,000 American workers.

I am particularly pleased to share with the Senate Finance Committee the views of the valve manufacturers on the Multilateral Trade Negotiations insofar as the valve manufacturers are quite vulnerable to injury from imports and positions negotiated in Geneva will bear significantly on the health of those of us in the fabricated metals industries.

As members of the Committee know, in recent years the fabricated metals industries have experienced a trade deficit. The valve manufacturers fear that the tariff reductions and codes of conduct negotiated in Geneva may result in a widening of the deficit. A continued deficit may well prompt manufacturers of volume product lines within the fabricated metal industries, including the valve manufacturers, to move their production facilities offshore in order to take advantage of lower labor costs found in foreign sites. The valve manufacturers like other fabricated producers, are extremely interested in avoiding the negative consequences that may result from the positions negotiated in Geneva. It is with this concern that I wish to comment on the Multilateral Trade Negotiations package as we know it at this time.

The valve manufacturers see little of positive value in the Trade Negotiations package.

As reported, the Subsidies and Countervailing Measures Code will probably be the most important part of the Geneva agreement. To the valve manufacturers the Subsidies Code is certainly the most troubling portion of the trade package.

The valve manufacturers disagree with the proposition that an injury finding should be required before countervailing duties can be imposed. The valve manufacturers cannot support the idea that an injury finding is necessary after a finding of foreign government subsidization has been made. The domestic valve manufacturers are painfully aware of the experience of other American industries in their efforts to prove injury at the International Trade Commission before relief from import competition can be secured. Aside from the time and expense involved in determinations of this sort, the procedure has provided little assurance to industries that injurious and unfair competition will be found by the Commission.

Another troublesome aspect of the proposed Subsidies Code is embodied in the injury definition. As I understand it, the proposed Code would require a finding of "material" injury before action on subsidies could be taken. The requirement of "material" injury is a more stringent test than the present injury standard required by the International Trade Commission in either antidumping or countervailing duty cases. As a result, the valve manufacturers oppose not only the requirement that there be an injury test before countervailing duties are imposed, but also we oppose the creation of an injury test that is stricter than the present standard.

An additional problem in the Subsidies Code involves the treatment of developing countries. The proposed Code would provide the developing countries with special and differential treatment. Our manufacturers face a substantial threat from increasing imports from developing countries. As a consequence, the valve manufacturers cannot embrace any actions that will encourage continued rapid growth of imports from the developing nations. Simply stated, the valve manufacturers do not agree that developing countries should be exempt from the requirements of the Subsidies Code.

If the Subsidies Code is to provide all trading nations with a basis for conduct that would eliminate unfair trade practices, the valve manufacturers see little justification for terms in the negotiated trade package that strengthen the trading position of the developing countries, some of our strongest competitors. It is our view that the Generalized System of Preferences is sufficient preferential treatment for developing economies. To grant the developing exemptions from full compliance with the Subsidies Code is, in our opinion, unnecessary.

The bitter experiences of many American industries which have attempted to secure countervailing duties suggest to the valve manufacturers that the implementing legislation accompanying the Subsidies Code ought to include provisions to improve the administration of the countervailing duty statute. Any improvement in the administration of the countervailing duty statute should include removal of the wide discretion the Treasury Department now claims in these matters. In addition, we feel the statute should include a more precise definition of what actions should be taken by Treasury to countervail subsidized imports. It is the valve manufacturers' view that the present statutory period of 12 months allowed for making final determinations on foreign subsidies is far too long a time. Furthermore, we feel these final determinations can be made in a shorter time period without causing any difficulties or hardships to our government or foreign exporters. It is our belief that allowing the Treasury Department to reduce subsidies through offsets presently employed is inconsistent with the central objective of using countervailing duties to balance the effects of harmful foreign subsidies.

Finally, as a matter of equity, we urge that all pending countervailing duties petitions be considered under the terms of the existing statute rather than under the terms of the new Code.

Turning to the Safeguards Code, the valve manufacturers fear that this Code will bring about changes in the U.S. "escape clause" procedures which will make it even more difficult than it presently is to secure import relief.

As members of the Committee know, only 6 out of 37 industries that have pursued "escape clause" cases under the Trade Act of 1974 have been successful. At present, import relief secured through "escape clause" action is limited to a five year period. In practice, only one case has resulted in import relief of greater than three years. It is safe to say that short time periods for relief do not allow industries to recover from the effects of unfair foreign competition. In addition, the present procedure provides for the extension of import relief for only one three-year period. The valve manufacturers believe that import relief should not be limited to one renewal period of only three years.

As in the case of subsidies, the valve manufacturers are concerned that the Safeguards Code will provide for special and differential treatment for developing countries. As in the case of the Subsidies Code the valve manufacturers are opposed to the granting of any exceptions for developing countries because of the rapidly expanding role of developing countries' imports in the American marketplace.

Finally, the valve manufacturers are opposed to any consultative mechanism which would have the effect of delaying implementation of safeguard measures. It is our belief that the ability to take unilateral action against unfair foreign activity should not be compromised by any portions of the Multilateral Trade Negotiations package.

The valve manufacturers are disappointed to learn that the proposed Code on licensing addresses simply the administration of licensing procedures rather than the elimination of such procedures. If the trade policy of the United States concerns itself only with the administration of licensing procedures, then, we urge very strict enforcement of the proposed rules. Full disclosure by the United States government is an essential ingredient in solving problems which American firms encounter with foreign licensing authorities. The valve manufacturers would expect, as a result, that the United States government would act expeditiously to prosecute all complaints against foreign licensing authorities which act contrary to provisions of the Code.

The valve manufacturers find these Negotiations critical to the wellbeing of our industry. We commend the diligence of the Senate Finance Committee in its exhaustive consideration of the trade package.

On behalf of the Valve Manufacturers Association I thank you for providing me this opportunity to testify.

TESTIMONY BY JOSEPH CASEY, CHAIRMAN, IMPORT TASK FORCE, VALVE MANUFACTURERS ASSOCIATION BEFORE THE SUBCOMMITTEE ON INTERNATIONAL TRADE OF THE SENATE FINANCE COMMITTEE

Mr. Chairman, my name is Joseph Casey and I am chairman of the Import Task Force for the Valve Manufacturers Association. The Valve Manufacturers Association includes seventy-two manufacturers accounting for approximately eighty percent of the total United States industrial capacity. The domestic valve manufacturing industry has total annual sales of approximately $1.7 billion. I am also President of Mark Controls Corporation, Evanston, Illinois, a major U.S. valve producer.

The valve manufacturers, like other fabricated metal manufacturers, are quite concerned with the changes in the countervailing duty statute that may result from the implementation of the Subsidies Code of the Geneva trade package.

It is my feeling that the American trade negotiators have done a fine job of negotiating the Subsidies Code at Geneva. Of course, the test of their efforts will be measured by the degree to which this Code brings us closer to an international system that will control the subsidization of products for export. It is the view of those of us in the valve manufacturing industry that a successful Code rests not only on the strength of what our negotiators accomplished in Geneva but also on the administration of the domestic countervailing duty statute as it will stand after the implementation of the Geneva agreement.

For some time fabricated metal products manufacturers, along with other industries which face the competition of subsidized imports, have felt that regardless of the outcome of the Geneva trade negotiations, substantial changes in our domestic countervailing duty statute were required. Changes are required simply because foreign subsidization is a very prevalent practice and because the United States Treasury Department has not been as aggressive as it should be in its enforcement of the existing countervailing duty law.

For these reasons, I would like to urge that the legislation required to implement the terms of the Geneva negotiations include substantive amendments to our current countervailing duty law. Without amendments to the present law, I fear the countervailing duty law will continue to be inadequately administered.

In particular, I urge that the responsibility for administering the countervailing duty statute, itself, be removed from the Treasury Department. I take this position because the Treasury Department has been remiss in meeting their statutory duties. Often they have failed to meet deadlines in the enforcement process and have freely reduced calculated amounts of subsidies and duties despite their having no clear statutory authority for doing so. Likewise the Department has held *ex parte* meetings with representatives of foreign governments and industries in which information was exchanged without domestic petitioners having a chance to particinate.

In my view the Department of Commerce may prove a more appropriate agency in which to place the authority for administering the countervailing duty law.

Furthermore, in my view, some additional changes in the present statute should be made. As a general proposition, the implementing legislation should shorten the deadlines existing in the present statute. Also the current law should be amended to require the Treasury Department to publish in the Federal Register the reasons for their decisions in countervailing duty matters. It would be helpful, as well, to have Treasury publish periodic public reports about foreign subsidy practices. The current broad discretion enjoyed by the Treasury Department should be curtailed if the abusive practice of reducing countervailing duties is to be eliminated.

Other important changes in the present statute seem called for. Specifically, the formalization of the countervailing duty proceedings seems necessary. Currently, the process is more secretive than open. So important a government action demands more openness. A prohibition on the submission of confidential information in closed *ex parte* meetings would be helpful. Subsidies cases must, in my view, be made as independent of political pressure as possible. Any measure that can be taken to eliminate the political pressures currently present in countervailing duty considerations would be welcome.

Turning to the Code's specifics, the recognition in the proposed Code that "internal" subsidies, like the underwriting if losses in state-owned companies, can harm industries in other countries is a positive step. However, the acceptance of an injury test to be used before the United States can act to countervail a subsidy scheme is too high a price to pay for the recognition of "internal" subsidies. To require an injury test before "internal" or export subsidies could be countervailed significantly reduces the utilizaion of the domestic countervailing duty. This seems unreasonable since subsidies are per se an unfair trade practice. As a practical matter, the institution of an injury test will mean domestic industries would have to incur additional expense, and wait a longer period, to correct any activity that is a plain violation of fair trade practices.

Under any circumstances, if an injury test were to be adopted it should be one that is simple and certain.

In conclusion, I wish to thank the Committee for allowing me this opportunity to testify. I am thankful as well, that you will carefully scrutinize the proposed Subsidies Code and take the necessary steps in the implementing legislation to see to it that the domestic countervailing duties is adequately administered.

Statement of James Humphrey, Vice Chairman, United States Fastener Manufacturing Group

Mr. Chairman and Committee Members: Thank you for affording me the opportunity to appear before the Finance Committee today. I am James Humphrey, vice-chairman of the United States Fastener Manufacturing Group, a non-profit trade association of domestic companies producing industrial fasteners. I appear today in a second capacity, as manager of industrial fastener sales at Bethlehem Steel Corporation.

As you know, the domestic industrial fastener industry has a keen interest in the multilateral trade negotiation legislative package. My industry has had serious import problems and we have found it necessary to petition for trade relief in a number of intances. Hence, we are very concerned about changes to our international trade laws that may alter the standards and procedures for obtaining relief from import created injury.

In my testimony I should like to review my industry's suggested amendments to the antidumping and countervailing duty statutes. We hope that these statutory modifications will be included in the MTN legislative package. We support the Danforth-Bentsen bill, S. 223, which includes a number of our suggested amendments.

We submit, first, that the Antidumping Act will be far more effective in arresting dumping if the following amendments are codified.

1. Withholding of appraisement should be required to commence after the institution of a formal antidumping investigation. Generally, appraisement is now withheld only after a preliminary less than fair value determination. It is very rare that withholding of appraisement is retroactive. We believe current procedures do not discourage dumping in the six months between the formal institution of an investigation and the preliminary finding.

2. The Antidumping Act would be far more effective if provisional dumping duties—calculated on the basis of weighted average less than fair value margins—were assessed after a preliminary determination. Current practice requiring the importer to post bond permits him to pay only a fraction of his ultimate antidumping liability at time of importation. Provisional duties would be held in escrow until the final determination.

3. Hearing rights under this statute should be extended. Additional hearings, particularly at Treasury, should be provided to permit litigants better opportunity to argue their cases. Unions and trade organizations should be given standing to participate in hearings.

4. In our estimation, the provision permitting preliminary referral of a case to the International Trade Commission to determine whether there is "reasonable indication" of injury or likely injury should be eliminated. This clause requires that the complaining industry submit an unreasonably detailed petition to Treasury. Additionally, this preliminary referral provision has been used improperly by Treasury to slow down investigations.

5. As it now stands, the term "industry" in the statute is not defined. We would favor the inclusion of a definition which would apply the term to regional industries and which would clarify that injury to only one product line in a multiproduct industry is sufficient to obtain relief.

6. The injury standard applicable to antidumping cases is "more than *de minimis*." This standard should, in our opinion, be codified in the antidumping statute.

7. The agencies vested with the authority to administer the Antidumping Act should be required to report to the Congress on actions taken under the statute. At this time no such requirement exists.

We also believe that certain amendments to the countervailing statute are appropriate. Permit me to briefly explain these amendments.

1. Appraisement should be withheld for allegedly subsidized merchandise on the date of publication of the notice of investigation.

2. Provisional countervailing duties should be assessed following a preliminary determination that "bounties or grants" are being bestowed. Such provisional duties should be held in escrow until there is a final countervailing duty determination.

3. The amendment defining "industry" suggested for the Antidumping Act is also appropriate for the countervailing duty statute. Industry should be defined to include a regional industry, as well as a single product line in a multiproduct industry.

4. The injury standard applicable in injury determinations for duty free goods is more than "*de minimis*." We suggest that this definition be codified in the countervailing statute to eliminate any possible interpretive difficulties.

5. The court and agency evolved definitions of "bounty" and "grant" involve confusing and inappropriate distinctions. Congress should provide specific language defining bounty as referring to any form of benefit, bestowed directly or indirectly. The term grant should be defined as "the bestowal of any privilege, favor, gift, advantage or the relief of any duty, obligation or requirement by rebate or remission of any form or type of direct or indirect tax or by any other method." This terminology should be liberally construed to include all conceivable benefits, incentives, privileges or forms of assistance.

This concludes my presentation. We sincerely hope that these amendments will be included in the MTN legislative package. Thank you for affording the United States Fastener Manufacturing Group the opportunity to present testimony today.

CHEESE IMPORTERS ASSOCIATION OF AMERICA, INC.
New York, N.Y., February 26, 1979.

MICHAEL STERN,
Staff Director, Senate Committee on Finance,
Dirksen Senate Office Building, Washington, D.C.

DEAR SIR: The Cheese Importers Association of America, Inc., appreciates this opportunity to answer the questions asked by the Senate Subcommittee on International Trade in its press release No. H–5 of February 8, 1979, regarding implementation of the Multilateral Trade Negotiations.

Our answers to your specific questions follow.

COUNTERVAILING DUTIES

1. Which agency or agencies should administer the countervailing duty law?

It is suggested that the Director of Customs have ultimate and primary responsibility for the administration of any countervailing duties which are imposed.

As the operative agency concerned, the Customs Service should have the power to establish, independently of the Treasury Department, the rules and procedures for investigation, imposition, and collection of countervailing duties, and be given a mandate to enable it to make all necessary investigations.

In the last few months (since the expiration of the waiver on January 3, 1979), the problems inherent in having countervailing duty policy established by other divisions of the Treasury Department, and enforced by the Customs Service, have frequently resulted in policy which is vastly divorced from the practical considerations of enforcement.

The entire countervailing duty law could be much more effectively enforced if complete responsibility for its operation, from beginning to end, were placed in the same agency. Indeed, as the Customs Service is the agency responsible for collecting the duties at ports of entry, assigning them responsibility for the entire procedure would be infinitely preferable to the creation of any new and independent agency.

Finally, it is suggested that the Commissioner of Customs be allowed the discretion to consult with any other branches of the Federal government which he feels may have an interest in the countervailing duty law, whether generally or in a specific case. For example, it might be useful for the Commissioner to consult with the Foreign Agricultural Service of the Department of Agriculture on matters pertaining to cheese. However, the ultimate authority and responsibility would remain with the Customs Service.

2. Definition of "injury".

It is agreed that a showing of "material injury" be required prior to the imposition of countervailing duties. For purposes of a "material injury" investigation, a two-tier injury test is proposed.

First, the subsidized imported product, and the domestic product which is claimed to be injured, should be physically compared to determine whether they are in fact comparable or substitutable for each other. This test really amounts to an affirmative determination that the items involved are "like products" (see 5, below). If they are "substitutable", then they are "like products", and the second test may be considered.

The second part of this proposed definition of "material injury" considers the competitive impact of the imported product on the market for the domestic product. If the imported product was found, because of a subsidy, to cause actual injury to sales of the domestic product in the market place, a countervailing duty could then be imposed to the extent necessary to offset the subsidy. The Subcommittee's suggested tests for injury (whether the subsidized import depresses prices to a significant degree, prevents price increases, affects return on investment, or reduces ability to obtain capital) are the appropriate questions to consider in determining competitive impact.

It is vitally important to avoid "double jeopardy" for imported goods. Goods or products which are imported subject to quotas established by the U.S. government should not also be liable to countervailing duty investigations and impositions.

The import quotas are established at levels which are not injurious to sales of domestic products. Therefore, it would be illogical to allow claims for injury to the domestic market on the basis of subsidies given to imported products, when the quotas are set at quantities which are deemed not to injure markets for domestic products.

3. Should the injury test, and other Code benefits, apply to imports from countries which do not sign the Code?

Serious problems of public international law arise when an attempt is made to impose the provisions of a treaty, however multilateral, on countries which are not signatories thereto.

It is unlikely that the MTN has yet achieved the status of custom in public international law. Therefore, it may be difficult to impose its provisions on non-signatories.

4. Definition of "like product".

With regard to cheese, the test for substitutability should be based on the Food and Drug Administration standards of identity for specific cheeses.

However, if no specific standard of identity exists for the specific product, then the code explanation of "alike in all respects to the product under consideration" should be used.

5. Should the countervailing duty law permit duties smaller than the amount of subsidy?

The purpose of the countervailing duty law is to prevent injury to domestic markets for domestic products. If the injury can be removed by imposition of a countervailing duty less than the actual amount of the subsidy given, imposing a duty of that lower amount would satisfy the purposes ofthe law.

Additionally, continuing a countervailing duty greater than that which is necessary to remove injury might consitute an unfair tariff within the general principles of the trade agreement.

6. Should administrators of the countervailing duty law be permitted to terminate investigations and if so, under what condition?

In addition to those conditions proposed in the Code (when the subsidizing nation voluntarily reduces or eliminates a subsidy, or exporters agree to reduce or terminate exports) it is suggested that the administrators of the countervailing duty law also be permitted to terminate investigations when requested to do so by the Executive Branch on the grounds of a foreign policy interest of the United States, or if the initiating party were to withdraw the demand for the investigation, or if, within a certain time, no injury is determined.

7. Dispute settlement apparatus.

The United States should (at least nominally) be represented by the State Department. The State Department should be authorized to delegate its representation before the Committee of Signatories to any other branch of the Executive which it feels would be more appropriate to handle the particuluar countervailing duty question which is raised. If there is no particular department which is suited to considerations of that particular industry, then the Customs Service should represent the United States.

If a private party wishes to raise questions pertaining to the countervailing duties, or wishes an investigation initiated, that party should direct itself to the Customs Service. The Customs Service should then, at its own discretion, recommend to the State Department that it (or some other branch of the Executive) be allowed to present the issue to the Committee of Signatories.

Private parties traditionally have no standing in international law, and it would be inappropriate for them to play any role before the Committee of Signatories (except, perhaps, as observers).

If an international decision calls into question U.S. practices, the President should be allowed to exercise his discretion to conform U.S. practices to the decision of the international body.

CUSTOMS VALUATION

1. How should the proposed methods of Customs valuation be implemented in domestic legislation?

The simplest and most flexible way to implement the Customs valuation statute would be by Regulations promulgated by the Customs Service.

LICENSING

1. What existing domestic statutes or administrative procedures would fall within the scope of this Code?

With regard to cheese, the only relevant statute in Section 22 of the Agricultural Adjustment Act, and the import regulations promulgated thereunder.

Specifically, with regard to the implementation of the new quotas on cheese, the Association strongly urges that the procedures traditionally used to establish quotas be continued, and continue to be administered by the Foreign Agricultural Service.

Licenses for cheese importation are divided into two categories: "Historical" and "Non-Historical".

Historical licensees are importers who have been importing a product not subject to quota for a period prior to the imposition of the quota on that product. Non-Historical licenses are awarded to importers who first import the quota cheese subsequent to the imposition of the quota.

The Association urges that 1978 be chosen as the base period upon which the new quotas will be allocated. Since quotas were first established 30 years ago, the government has not gone back beyond two years (from the date of the imposition of the quotas) in establishing the base year, so using 1978 (for 1980 quotas) would conform to that precedent. Further, the recently-established 1978 import figures are a more accurate reflection of the present demand for imported cheese in this country than the two immediately preceding years, when imports were adversely affected by shipping strikes and license transfer problems. All 1978 importers of record should be granted a license for 100% of their 1978 imports, and any unused quota should be distributed equally to historical licensees and new business applicants.

2. Should the provision of this Code be implemented by Executive Order or through legislation?

It is submitted that the Executive Order procedure should be used because, when changes need to be made, it would generally be more capable of a quick response.

3. Should private parties be allowed to raise issues before the International Committee of Signatories?

Again, under international law, an individual does not have standing before international bodies; only States do. To allow individuals access would not only bog down the work of the Committee, but its influence on the State-to-State level would be considerably diminished.

It is suggested that any problems which are thought suitable for the Committee of Signatories be submitted to the Customs Service, and thence to the State Department, as suggested above.

The Association appreciates this opportunity to be of assistance to the Subcommittee on International Trade.

Sincerely yours,

ROBERT L. FROMER,
General Counsel.

JOHN W. STEWART,
Arlington, Va., February 12, 1979.

DEAR MR. STERN: Enclosed is a copy of a legislative recommendation expected to be submitted later to the Congress by an Agricultural Technical Advisory Committee pursuant to provisions of the Trade Act of 1974.

It is submitted to you separately at this time because of the hearings on this subject now scheduled.

Sincerely yours,

JOHN W. STEWART,
F&V ATAC Member.

USDA–F&V ATAC REPORT TO THE CONGRESS ON THE MTN

GATT is now 31 years old, yet 41 nations of some economic importance have chosen not to join, thus indicating that they will not accept the implied international trade discipline fostered by GATT contracting parties.[1]

The Codes of International Trade Conduct now being developed in the Multilateral Trade Negotiation may well face the same fate as the GATT. The agreed Codes will apply only to countries which voluntarily become signatories. If the past is prologue, years will pass before there will be any realistic benefits from these new Codes.

This Committee believes that the United States should now take leadership to (1) assure all nations of its willingness to observe the new Codes and (2) provide strong incentive for all other nations to do the same.

The means to achieve this end are described in the attached ATAC Recommendation (Dispute Settlement.)

ATAC RECOMMENDATION (DISPUTE SETTLEMENT)

General comment: The Special Trade Representative, upon taking office, said "There's no alternative to free trade"; the U.S. must obtain the "same competitive opportunities that we grant (in trade to other nations). There's got to be equity".[1]

Members of the Agricultural Technical Advisory Committees[2], shortly after their chartering,[3] were provided a description of The General Agreement on Tariffs and Trade, "What is the GATT?" It said—

"Basically, the GATT provides three things: 1. A set of negotiated tariff concessions; 2. A set of written general rules designed in large measure to make these concessions meaningful; and 3. A forum for contracting parties to hear complaints, make decisions, and make arrangements for further negotiations".

This description goes on—1. To describe nondiscrimination and its exceptions; 2. To state that "Protection should be given to domestic industry through the customs tariff, and not through other commercial measures. Therefore, the tariff is the only legitimate barrier, and it is to be negotiated away"; 3. To emphasize that "The GATT is technically a contractural agreement only, its rules are contractural obligations—not codified laws. There is no unit responsible for seeing that members fulfill their obligations"; 4. To point out "GATT Shortcomings"; and 5. To declare that "The key objectives of the MTN include tariff liberalization and the elimination of nontariff barriers."

The President, in his Annual Report on the Trade Agreements Program (1977), said to the Congress:

"This country has a high stake in both the reciprocal reduction of barriers to international trade and the adoption of new rules to eliminate unfair trade practices. Across-the-board we are pressing for equality of access for our exports in the markets of developed countries. In particular, ways must be found to deal with problems of agricultural trade and nontariff measures, which received relatively little emphasis in earlier negotiations."

This Committee is aware that the two major considerations facing U.S. negotiations in the MTN were (1) tariffs and (2) non-tariff barriers, that (1) tariffs for the most part were at minimal levels and provided little or no bargaining power to the negotiators,[1] and (2) largely as a result of this decline in the value

[1] Ten of these 41 countries have centrally planned economies. Of the remainder. 10 are in Latin America. 8 in the Middle East, 6 in Asia and 6 in Africa.
[1] Wall Street Journal, Mar. 31, 1977.
[2] Established by the Trade Act of 1974.
[3] On Apr. 4, 1975.
[1] See Attachment A.

of tariffs as trade regulators, non-tariff barriers had proliferated around the world.

This Committee now is happy to accept the President's invitation to find a way to deal with problems created by non-tariff measures and submits a proposal for legislation to encourage reciprocal reduction of unfair trade practices.

The United States can appropriately now exercise leadership in the conduct of international trade by providing incentives for the observance of agreed trade rules through a modification of the application of its import duties.

Present legislation[3] clearly defines most of the "unjustifiable or unreasonable" trade practices which are offensive to U.S. trade and which are also in violation of existing trade codes. Reference to impairment of trade commitments made to the United States is clear. The statute is also specific with reference to the actions of foreign countries which impede U.S. trade with third countries.

Remedies authorized to enable the President to ameliorate the described unjustifiable and unreasonable trade practices are specific, as follows: "(A) may suspend, withdraw, or prevent the application of, or may refrain from proclaiming, benefits of trade agreement concessions to carry out a trade agreement with such country or instrumentality; and (B) may impose duties or other import restrictions on the products of such foreign country or instrumentality, and may impose fees or restrictions on the services of such foreign country or instrumentality, for such time as he deems appropriate."

Little use has been made of Section 301 by the President even though numerous petitions for its use have been filed. This is not entirely unexpected, especially since the authorized remedies, when used under existing practices, would bring forth prompt expressions of "retaliation" and demands for "compensation". In short, the remedies have an unpleasant aura.

Almost identical legislation, using the tariff as a tool, expressed in somewhat different terms is needed to eliminate the "self-serving" aspects of Section 301 and the anticipated international responses to any corrective action.

The "self-serving" aspect can be eliminated by expressing the "unjustifiable and unreasonable" trade practices in terms of violations of internationally agreed codes of trade practices. Similarly, any "compensation" aspect can be eliminated by assuring (1) that the legislation does not disturb any portion of present law which is involved in commitments (often called "bindings") to foreign countries or instrumentalities, and (2) that actions taken under such legislation only follow reasoned judgment that the practices involved are, in fact, in violation of agreed codes.

This new tool would involve no "compensation" to third countries since (1) only unbound column 2 rates of duty would be modified and (2) application of column 2 rates would be undertaken only after findings of violations of agreed international trade codes.

Such proposed legislation will be compatible with Congressional purpose as expressed in Section 301 of the Trade Act of 1974 as well as with each of the six declared purposes of that Act.

The new tool: The present United States Tariff rates have two major levels and one sub-level. These three levels largely conform with the concensus description of world economies[1]; i.e.—developed economies, underdeveloped economies, and state-trading economies.

Column 2 rates (the highest) apply to state-traders (also sometimes described as "unfriendly" or "communist".) Column 1 rates apply to all other countries although reductions from these rates apply to most under-develops for a large number of commodities[2].

The new tool would come into being by the creation of a new 2 column tariff wherein the Column 1 rates would remain as at present and the Column 2 rates would be re-established at 20 percentage points ad valorem equivalent above the respective Column 1 rates.

Most importantly a new rule would be adopted relating to the applicability of the respective tariff columns. Under this rule Column 1 rates would apply to those countries which adhere to internationally accepted criteria governing fair trade. Presumably initially such criteria would be those expounded by the General Agreement on Tariffs and Trade. World entities not adhering to such criteria would be subject to Column 2 tariff rates.

---

[3] Section 301 of the Trade Act of 1974; 19 U.S.C. 2101.
[1] Whether this is by accident or design is unclear.
[2] This condition is known as the "Generalized System of Preferences."

The adoption of this new toll by the United States will give incentive to each world nation to participate in[1] and comply with international trade agreements and will give the United States the means to discourage foreign nations from arbitrarily restricting or discriminating against imports from the United States. This tool can be used in a manner which will support world trade interests, support the enforcement of GATT (or other acceptable world trade criteria). enhance American trading interests, and encourage the adoption of similar criteria by others in a manner fair as well to the United States.

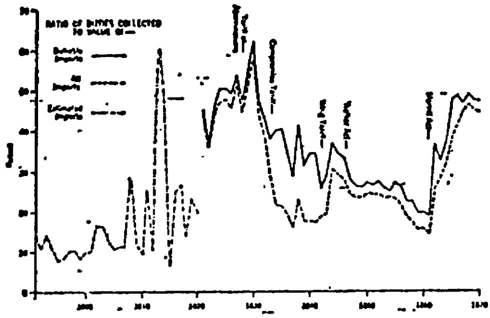
Significant procedures: It needs first to be recognized that the proposed new tool is not an "all or nothing" instrument. A minor or partial infraction of the accepted international trade criteria by a given country would not require a complete suspension of Column 1 rights for that country. Column 2 rights may be applied to a balanced part of trade with the offending country and Column 1 rights to the remainder of such trade depending upon the degree or extent of infraction.

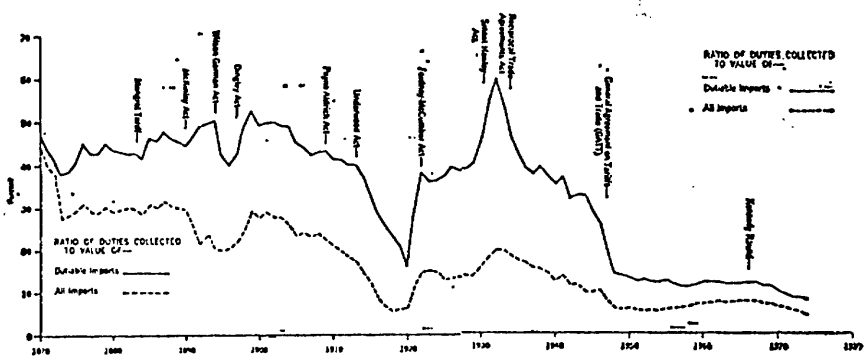
Under the new rule, changes in Column 1 rates of duty in the tariff would be carried out in accordance with applicable trade agreement legislation, with Column 2 rates automatically 20 percentage points ad valorem equivalent higher. All duty bindings given by the United States would be subject to the provisions of the new rules; i.e.—automatic increase in the bound rate for cause.

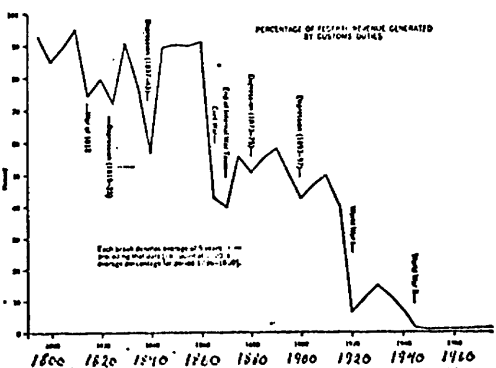
Administration of the rule, including assignment of specific duty columns (or parts thereof) to specific countries, both initially and subequently, would be effected by a Commission created fo this purpose. Such Commission would be empowered to provide for initial and annual assignment of Column 1 and Column 2 applicability by countries by tariff lines; to provide for changes in such assignments at any time for proper cause following public notice, hearing and decision; to assure equity in Columnar position assignment; and to provide a grace period for enforcement of the initial Columnar position assignments to permit the affected foreign countries to adjust their international trade policies so as to receive full benefits of the new United States rule.

[1] Forty-one significant nations have chosen not to join the GATT. U.S. bilateral agreements with the nations defining the agreed trade rules would be adequate to assure col. 1 rights.

Attachment A







—Percentage of Federal revenue generated by customs duties, 1791-95 to 1971-75.

STATEMENT OF THE TANNERS' COUNCIL OF AMERICA, INC.

The U.S. leather industry is in a unique position to comment on the issues relating to implementation of the multilateral trade negotiations. This position has been recognized by the Office of the Special Representative For Trade and the Departments of Agriculture and Commerce. As President of the Tanners' Council of America, Inc., I have been serving as a member of the Agricultural Technical Advisory Committee on Livestock and Livestock Products, and the Industry Sector Advisory Committee on Leather and Leather Products. I am Chairman of this latter Committee.

Because foreign trade is so crucial to our industry we have developed definite ideas on many of the issues that must be dealt with in determining whether or not the trade package should be accepted, and if it is accepted, what the nature of the implementing legislation should be.

A graphic picture of what international trade means to the hide, leather, and leather products sector is provided by a chart, enclosed as Appendix I, showing the balance of trade for this sector. Note that the deficit in the balance of trade for this sector in 1978 was about $2.5 billion. As the chart shows, this is a ten-fold growth in deficit from 1966, and unless the U.S. makes improvements in its trade policy, it is bound to widen in the future.

It is obvious that the problems that this sector has in international trade cannot be solved by ordinary measures. The progress made by the negotiations of the Codes is potentially helpful. However, without the proper implementing legislation the practical effect will be non-productive.

The trade problems of the leather sector are symptomatic of the worst trade problems of agricultural and industrial products. Steps to solve our problems are appropriate towards solving the more inclusive problems that have surfaced in U.S. trade during the past few years.

A SPECIFIC RECOMMENDATION

The objective of the Bill as preliminarily proposed by the Administration is "to expand opportunities for the commerce of the United States in international trade; to improve . . . to maintain . . ." etc. These objectives, so clearly put, have little chance of attainment unless there is a fundamental reorganization of trade policy functions.

The experience gained by the staff of the Office of the President's Special Representative For Trade and the liaisons established between industry, agriculture, labor on the one hand and STR on the other, must be maintained and strengthened for the future.

Recent changes in international trade in the form of restrictions on access to raw material, government participation in key industries, agricultural subsidy plans, wage subsidies and many others, have expanded in many countries. The problems and distortions in trade created by these practices cannot be dealt with by existing bureaus and departments on a part-time basis. If the United States is going to effectively promote the objectives of the Trade Bill, there must be an organization sufficiently knowledgeable and sufficiently in touch with U.S. interests on the one side and foreign practices on the other to be able to be a true aid for U.S. objectives.

A step in this direction was taken in the course of the trade negotiations. An expert staff was developed at STR and good communications have been established between that Office and U.S. industry agricultural sectors and labor. From personal experience, I know that the only agency in the U.S. government that fully understands the problems that we have in our industry is the Office of the Special Trade Representative. In the leather sector there have been many countervailing duty suits as well as actions under the 201 and 301 sections of the Trade Act. The proceedings and results of these actions varied considerably.

Experience was almost all bad in countervailing duty suits. In almost every case the Treasury Department took an adversary position. It seemed to us in the industry that the Treasury Department did its best to take the part of the accused subsidizing country and did the least to further the interests of U.S. industry. At times it seemed as if the Treasury Department was incapable of even recognizing a subsidy.

The actions under Section 201 of the Trade Act were somewhat more satisfactory. In these the International Trade Commission acted as a judicial body weighing the evidence of the U.S. industry against that of the exporter. We believe the judgments handed down were impartial and based on the evidence as presented. However, the process was hampered by the inability of the ITC to develop sufficient expertise in the international trade practices of the industries involved. Further, where determination of injury was important, a lack of communication and understanding of the industry was apparent. If the role of the ITC in Escape Clause action is to be continued, a much broader definition of its responsibilities must be made and a greater depth of staff allowed.

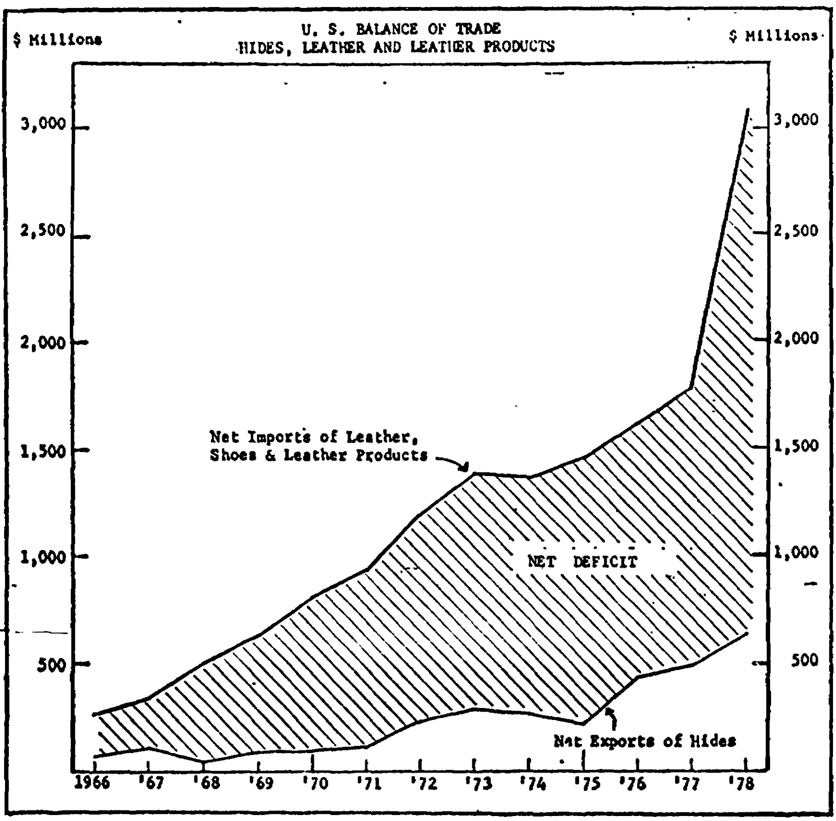
The Tanners' Council's experience with a 301 action was different from either of the above. While results were difficult to achieve, throughout the proceedings, which lasted more than a year and a half, the industry and STR cooperatively sought a means of accomplishing the industry's objective. At no time was there either the adversary feeling as in one case or the judicial atmosphere as in the other. During the course of the 301 process, STR gained a great deal of experience in international negotiations pertaining to a specific industry. Also, there are now people at STR who understand the basic problems of international trade in our sector. They will comprehend when major changes take place in other countries' policies or actions. The expertise that has been gained in bilateral talks as well as in the multilateral negotiations can be very helpful for us in the future.

It is my concern that the knowledge and prestige that STR enjoys at present should not be lost for the future. Where it is possible, we would like to see STR given the responsibility for administering the Codes they have negotiated. In that way a true partnership can be established between the private sector and the government to achieve the objectives of the Bill under discussion.

OTHER SUGGESTIONS

I have had a hand in preparing the advice as presented by ISAC #9, Leather and Leather Products, and the ATAC on Livestock and Livestock Products. I agree with the reports that have been submitted to the Committee with respect to the Committee with respect to the Codes that have been negotiated. I will not here reiterate any of the points that I asked to have included in these reports.

EUGENE L. KILIK,
President.



BEST COPY AVAILABLE

ATTACHMENT I

LAW OFFICES OF SHARRETTS, PALEY, CARTER & BLAUVELT, P. G.,
Washington, D.C., March 5, 1979.

Hon. ABRAHAM RIBICOFF,
Chairman, Subcommittee on International Trade, Senate Committee on Finance, 2227 Dirksen Senate Office Building, Washington, D.C.

DEAR MR. CHAIRMAN: These comments are in response to the Subcommittee Press Release of February 8, 1979, concerning implementation of the Multilateral Trade Negotiations (MTN) and should be included in the record of the hearings conducted by the Subcommittee on February 21 and 22, 1979. This submission is not made on behalf of any particular client, but as a reflection of our long experience as legal practitioners in the international trade and Customs' Law field.

The Subcommittee has asked or comments on changes in existing laws affected by the agreements negotiated in the MTN. These changes may be either necessary or appropriate to implement the trade agreements. The Subcommittee is specifically concerned at this time with agreements affecting Countervailing Duties, Antidumping Duties, Safeguards, Customs Valuation and Licensing.

We wish to confine our comments to the subject of Antidumping, where as we understand it negotiations are still underway to amend the Anti-Dumping Code, and to have those amendments reflected in U.S. law. Our failure to address the other subjects raised by the Subcommittee should not be construed as either an endorsement of or opposition to these agreements. Rather we have narrowed the focus of our analysis so as to highlight our concerns that proposed modifications to the Antidumping Act, as we believe them to be developing, are inimical to the national interest.

The purpose of the MTN is, and has been to continue the liberalization of the multilateral trading system which developed after the Second World War, centered about the General Agreement on Tariffs & Trade (GATT). Successive rounds of tariff negotiations have led to a downward spiral in the high levels of tariff protection previously erected by the industrial countries. These protective walls were the residue of the chaotic period of the 1930's when the beggar-thy-neighbor policies of the major trading nations contributed to and reinforced world-wide depression. For the U.S., the mandate for this round of negotiations is contained in the Trade Act of 1974, wherein the Congress enjoined the President to work toward the reduction and elimination of barriers to trade which prevent the development of an open and non-discriminatory trading system. For the first time these negotiations were to address themselves in a comprehensive way to the problems of the various non-tariff barriers to trade—the importance of which has increased as the general level of tariff protection has decreased. It is, therefore, incumbent upon us when evaluating the results of the MTN to keep the ultimate objective in mind—the continued liberalization of the multilateral trading system. Unfortunately, some MIN implementation proposals now evolving in the Executive Branch and in the Congress would have the opposite effect.

The European Economic Community (EC) has demanded that the GATT Anti-Dumping Code, concluded in the Kennedy Round, be renegotiated to make its provisions, most importantly those concerning injury and causality, parallel to the Subsidy/Countervailing Duty Code provisions. The President's notification to the Congress of January 4, 1979 specifically referred to the possible renegotiation of the Anti-Dumping Code to accomplish this EC objective, and indicated that changes in the U.S. Antidumping Act may be necessary. It is worth pointing out that the injury/causality provisions of the Subsidy/Countervail Agreement are significantly less stringent than those in the existing Anti-Dumping Code. What is being suggested then is a lowering of the threshold of injury, agreed to internationally, necessary for the application of antidumping duties. It has been suggested that the EC has become more interested of late in using its antidumping legislation to restrict imports from various sources and therefore wishes to use a loosening of the injury/causality criteria internationally as a means of changing the applicable Community regulations. The questions, therefore, arise as to whether introduction of this new language into the U.S. Antidumping Act will have a similar effect and whether the United States should participate in the renegotiation of the Anti-Dumping Code so as to make it easier for the EC to apply dumping duties on U.S. exports? (For instance, recently the EC imposed dumping duties on U.S. exports of kraft liner-board). The interests of neatness, in having both Codes contain similar language on injury and causality should, it appears to us, give way to concerns that the negotiations will result in a less liberal trading system. The U.S. should not agree that the existing injury/causality provision in the Anti-Dumping Code be modified. If it is so modified, the U.S. should make no revision to present law but should make it clear that the U.S. considers the language of the Code, as amended, as being consistent with the present Antidumping Act as interpreted by the U.S. International Trade Commission (USITC).

There have been numerous additional suggestions, many in the form of draft legislation developed by special-interest groups and various members of Congress, for amending the U.S. Antidumping Act. These amendments which would fall under the "appropriate" category in the implementation legislation since they are not required by MTN agreements all appear designed to make the Act a more efficient tool for restricting imports into the United States. These attempts are we believe stimulated by the diminished competitiveness of U.S. manufacturers, especially of consumer goods, in world markets and massive U.S. trade deficits. We should not be deluded by the rhetoric of special interests. These developments are not the result of "dumping" or "unfair trade practices" abroad, but flow from a continued relative decline in productivity in the United States and the massive balance of payments effects of OPEC oil price increases. Solutions, therefore, must address these underlying causes.

It is not within the scope of this Subcommittee's proceedings and it would be therefore inappropriate to address these issues in greater depth here. The fact remains, however, that the Congress and Administration have come under great pressure from declining American industries because of these developments—steel, textiles, consumer electronics to name the most prominent and most vociferous—and have been willing to increasingly go along with "solutions" to the basic weaknesses of these industries which limit imports, at consumers' expense, but fail to provide any reasonable expectation that these industries will regain their competitiveness.

The many proposals to amend the Antidumping Act and Customs Regulations implementing it are nothing more than attempts to convert the Act from a remedial to a punitive statute. It has been proposed, among other things, that the pricing investigatory authority be transferred from the Treasury Department to the USITC or Commerce Department because Treasury is too subject to taking "policy" into consideration; that time limits be shortened to provide expedited relief to petitioners; that discretion to reject petitions which fail to present a prima facie case of Sales at Less Than Fair Value (SLTFV) or injury be eliminated; that preliminary injury aanlysis by the USITC to weed out weak cases be eliminated as too burdensome to petitioners; that dumping duties be assessed retroactively; that importers be required to deposit estimated duties based on stale investigations and analyses which ignore intervening price revisions; that Treasury's adjustments to foreign market value which are small and "bothersome" be ignored; that discontinuances based on price assurances be eliminated; that findings be revoked only after many years of price monitoring; that Customs require pricing information on all invoices and that the data thus collected be published periodically.

This list is far from exhaustive, but the intent is obvious. It is self-evident that suggestions such as these are in complete contradiction to the mandate to liberalize and eliminate trade barriers contained in the Trade Act of 1974. Such amendments cannot be considered as "appropriate" to that purpose and should not be considered as part of the MTN implementation package.

Because the Administration has not yet made clear what changes it will seek in the Act (other than conforming changes to the injury/causality provisions), we are at a disadvantage in determining which proposals to address in detail. Those that seem most likely to be a part of the package at this time however deal with shortened time limits for investigations and requiring the deposit of estimated duties. As noted above we believe both of these proposals to be ill-advised. The time for completion of the initial fair value investigation has already been compressed by more than half over the past decade. Given the complex nature of the data foreign exporters are required to produce within 30 to 60 days under current procedures, and the necessity that this data be verified by U.S. Customs representatives in the foreign country, any further compression would simply lead to initial arbitrary and incorrect deteminations requiring later modification. The proposal to telescope the final three months of the fair value inquiry into the period of the USITC injury investigation would similarly lead to determinations based on incomplete information, forcing the Commission to decide whether injury exists without time to fully consider the final margins of SLIFV.

The proposal to require the payment of estimated dumping duties after a finding, based on the fair value investigation, rather than to require (as is now the practice) that financial security be posted pending assessment on an entry-by-entry basis, is a clear effort to punish importers even if no Sales at Less Than Fair Value are occurring. If prices have been adjusted to eliminate any SLTFV as is the rule in dumping cases, the purpose of the Act has been accomplished. Even if estimated duty payments are later returned when the assessment process is completed and no margins are found to be present importers have lost the use of their money for extended periods of time. Furthermore, it should be noted that calculating estimated duties based on margins found to exist during fair value investigations would be unreasonable and capricious. Fair value determinations are not subject to the rigorous statutory mandate which governs the assessment process following a finding. Often different, less accurate methods of price comparison have been used to determine fair value—methods which are necessarily abandoned to a more exacting analysis during the assessment stage and which radically alter the initially calculated margins.

It is argued that the collection of estimated duties is necessary to force exporters to produce the pricing data necessary for assessment in a more timely manner. We do not believe this to be the case. Delays in assessment have historically not resulted from the failure of foreign manufacturers to cooperate, but from long delays in Customs' preparation of "master lists" upon which assessments depend. This process has been given low priority by Customs and Treasury which have failed to devote the necessary resources, both quantitatively and qualitatively to the activity. The answer to streamlining the assessment process is, therefore, not to sanction arbitrary and inequitable procedures, but to commit the necessary human resources to the task on a continuing basis.

There are a number of changes to the present law and practice which could improve the effectiveness of the statute—as a remedial measure to expeditiously eliminate injurious price discrimination. In order to eliminate frivolous cases, which drain the resources of the administering agencies at great cost to the taxpayers, while diverting attention from domestic industries really in need of relief, all petitions should be directed to the USITC as well as the Treasury. The USITC would determine within 60 days of the initiation of an investigation whether sufficient evidence of injury exists to warrant continuation of the proceedings. While currently the law does provide for such a procedure, in instances where the Secretary of the Treasury determines "substantial doubt" of injury to exist logically all cases should be subject to preliminary scrutiny by the agency charged with analyzing evidence of injury so that unnecessary inquiries can be quickly ended. Extending the present 30 day period to 60 days would allow the USITC to make a more meaningful analysis of the facts.

A major step toward increasing the effectiveness of the statute as a remedy for injurious price discrimination, and relieving the administrative burden which has come with increasing cases and decreasing staff, would be a revision of the presently restrictive use of price assurances as a means of expeditiously resolving antidumping investigations in a non-arbitrary fashion, while providing the protection to affected industries contemplated in the Act. While price assurance/discontinuance procedures could be modified by Treasury without recourse to legislation, it is understandable that the Department is hesitant to take a step of such magnitude without Congressional acquiescence, given current criticism of its administrative efforts.

It is interesting to note that of the some 70 dumping findings outstanding at the end of 1977, only 14 pre-date 1970. Of course many older findings have been revoked, but it is also true that previously a much more flexible "price assurance" policy was in effect. If SLTFV were found producers were encouraged to adjust prices, give assurances of no future sales below fair value, and the antidumping procedure was terminated (on the theory that the statutory objective had been accomplished). Under pressure from those who believed this procedure was too lenient to foreign producers, and provided no monitoring of their future price behavior, the Treasury radically revised its price assurance policy. In May, 1970 two changes were made. First, investigations would no longer be terminated with a negative SLTFV determination when price assurances were received, but only discontinued with a requirement for continued price monitoring by Customs. Second, price assurances would only be accepted when margins of Sales at Less Than Fair Value were "minimal." Minimal margins were interpreted as no more than about 1 percent on a weighted average basis (that is, for example, margins of 50 percent on 2 percent of sales, or margins of 1 percent on 100 percent of sales). While this definition has been expanded slightly over time, it is basically still the benchmark used to determine whether a discontinuance is appropriate.

With the benefit of hindsight, it is clear that while the former modification made sense, the standard adopted in the latter was far too inflexible. Those familiar with fair value investigations now that the mathematical margin for error alone far exceeds 1 percent—5 to 10 percent is closer to the mark. Furthermore, keeping in mind the remedial objectives of the statute, why impose any numerical limitation on the acceptance of price assurances? The only test ought to be the Secretary's satisfaction that foreign producers intend to abide by a commitment on future pricing. Such a commitment, coupled with reasonably thorough monitoring of those prices by Customs, should accomplish the statutory objectives without requiring the assignment of hundreds of officers to keep the assessment process current and resorting to the requirement that estimated duties be deposited. A flexible price assurance policy would also greatly reduce the pressure on the Secretary to discontinue cases because of "special circumstances," although that option should still be available to him in those rare instances where conditions change radically following the initiation of an investigation, making its continuation inappropriate. The reasonableness of that determination is, of course, subject to judicial scrutiny.

To further rationalize the statute, Congress should repeal Section 205(b) of the Act. Cost comparisons as opposed to price comparisons are not originally a dumping concept. This provision was added to the law by the Trade Act of 1974. The Congress provided little guidance in that statute and in the legislative history as to how "cost of production" (COP) is to be calculated. As a result there has been confusion and uncertainty in administering the provision and a significantly expanded burden on the limited resources of the Customs Service in conducting these extremely complex inquiries in foreign countries. All petitioners seek to turn antidumping investigations to cost of production calculations simply as a means of obtaining information on their competitors' operations. Foreign producers have been reluctant to turn over their most closely held industrial secrets to U.S. authorities who are subject to the Freedom of Information Act and the discovery procedures of the U.S. Courts. No producer wants to give up this kind of data. Recently, U.S. petitioners have refused to give their COP to Treasury upon request to aid in determining what foreign COP might be!

Rather than amend the provision to provide more precision to its terms it would make more sense to delete it from the Act altogether, returning the law to its pre-Trade Act form which defined Sales at Less Than Fair Value in terms of price. This is a complicated enough calculation, but one with which U.S. authorities have some experience, and a concept which has been internationally sanctioned. The cost of production analysis is really unnecessary since no producer can sell in all markets below production cost for anything more than the briefest of periods—unless he is being subsidized. The problem, therefore, is best dealt with either 1) extending the period for price comparisons in appropriate cases or; 2) initiating countervailing duty investigations to determine whether subsidies exist.

Finally, Section 516 of the Tariff Act of 1930 should be amended to provide the same right of immediate judicial review of antidumping determinations for importers and foreign exporters as domestic manufacturers enjoy under present law. Currently importers must wait until an entry of the product in question has been liquidated and assessed additional duties before protesting, under Section 514 of the Tariff Act. This often is several years after the Treasury or USITC determination. Domestic manufacturers on the other hand may immediately appeal an antidumping determination to the Customs Courts under Section 516. In the interests of equity this disparity should be removed.

The Subcommittee has asked for views as to what agency or agencies should administer the antidumping law. The fact that the question is asked at all is illustrative of the dissatisfaction being voiced in some quarters with current Treasury administration of the law. While our experience with Treasury and Customs, like those of other practitioners in this field, has not always been as we would have had it, we believe that many of the criticisms result from inadequate resources having been devoted by the U.S. Government to the administrative effort. This is a problem which will not be resolved by moving functions around the government. Furthermore, it is our belief that reorganization of the government for the purposes of conducting trade policy and administering the trade laws is far too important to be dealt with as a secondary issue in the context of MTN implementation. It is a separate and separable issue which deserves the full focus of the Congress' attention at a more appropriate time.

Respectfully submitted,

SHARRETTS, PALEY, CARTER & BLAUVELT, P. C.
PETER O. SUCHMAN.
GAIL T. CUMINS.

THE COLD FINISHED STEEL BAR INSTITUTE,
Chicago, Ill.

Hon. ABRAHAM RIBICOFF,
Chairman, Subcommittee on International Trade, Committee on Finance, Dirksen Senate Office Building, Washington, D.C.

DEAR SENATOR RIBICOFF: I am writing on behalf of the Cold Finished Steel Bar Institute to comment on the implementation of the Multilateral Trade Negotiations as requested in your release dated February 8, 1979.

Our Institute is a trade association composed of twenty-eight nonintegrated producers of cold finished steel bars ("CFSB"), with plants in fourteen states. These manufacturers buy their raw material, hot-rolled bars, from integrated mills, nine of which are associate members of the Institute. The nonintegrated producers are relatively small companies, often family owned.

CFSB are a precision steel product used extensively as motor shafts, as a feedstock for screw machine products and as a component in tools and other equipment. CFSB are used in virtually all moving parts where strength, dimensional accuracy, or a smooth finish are required.

Over the past ten years, imports of CFSB have been a serious problem for the domestic industry. Imports rose sharply during the early 1970's, leveled off and even declined during the worldwide steel boom of 1974, and then began their upward climb again. By 1977, imports were at a record level of 180,000 tons. In 1978, that record was exceeded by 26 percent, as imports rose to 226,000 tons. During these two years, American producers continued to operate at only between 70 percent and 80 percent of available capacity.

It is against this background that we offer the following comments on the specific questions that you raised in the release of February 8, 1979:

A. COUNTERVAILING DUTIES

We believe that the Subsidies Code negotiated in Geneva, at least so much of it that is presently publicly available, contains a significant advance over past international rules by recognizing that domestic subsidies can have harmful trade effects, which importing countries may seek to remedy. How useful this provision will be as a practical matter depends, however, upon the implementing legislation your committee will consider.

1. We believe that the implementing legislation should define "injury" under the Subsidies Code in the same manner that that term is now defined under our antidumping laws. That is, in the words of the Finance Committee, "injury must be a harm which is more than frivolous, inconsequential, insignificant, or immaterial." (Rep. on the Trade Act of 1974, S. Rep. No. 1298, 93d Cong., 2d Sess., p. 180.) This same standard is already present in our countervailing duty legislation with respect to injury determinations relating to subsidized, duty-free imports. (Rep. of the Comm. on Ways and Means on the Trade Reform Act of 1973, H. Rep. 571, 93d Cong., 1st Sess., p. 74.)

Since subsidized imports are not competing "fairly" with domestic production, a minimal injury test, such as that used under our present legislation, is fully justified.

2. We believe that the implementation of the Subsidies Code should cover like or "directly competitive" products as has been the tradition in our past trade legislation. Limiting coverage to like, i.e., precisely identical, products could virtually eliminate the usefulness of the Code, especially in the area of steel products, where a great variety of sizes and chemical grades are sold.

3. We do not believe that the implementing legislation should permit the imposition of duties smaller than the amount of subsidy being granted by a foreign government. The intent of the countervailing duty law is to offset any unfair advantage due to a subsidy enjoyed by a producer of an imported product. Opening the door to the possibility of offsetting only a part of this advantage could engender the types of political pressures on the administering agency that ought to be foreign to the implementation of our trade laws.

4. We believe that the implementation of the countervailing duty law should be subject to judicial review on the same terms and to the same extent as is specified in the Administrative Procedure Act.

5. While we understand the need for an international dispute settlement mechanism in conjunction with the Subsidies Code, we believe it is extremely important to assure that that procedure does not undercut the rights of private parties under our countervailing duty legislation. That is, if a complaint is

successfully prosecuted against subsidized imports, it ought not to be possible for an international body to upset that determination. This is especially true where, in countries like the United States, determinations are made by objective quasi-judicial bodies and are subject to full judicial review. Moreover, in conducting any international procedures, representatives of the United States should be required to consult with interested American parties and to take their legitimate interest fully into account.

6. In addition to definitions of "injury", the implementing legislation should also contain definitions of "industry" and "subsidy". The defintion of "industry" should be based upon the precedents of the ITC, which allow injury to regional industries to be considered under appropriate circumstances. The definition of "subsidy" should illustrate the kinds of domestic subsidies that can distort international trade and have done so in the past, such as government ownership of production facilities, government guarantees to banks financing ailing industries, excessive protection of domestic industries from foreign competition, and others.

B. ANTIDUMPING DUTIES

As noted above, we believe that the concepts of "injury", "industry", and causality now applicable under our antidumping laws should be applicable as well to the implementation of the Subsidies Code.

C. SAFEGUARDS

1. We believe that the present limitation requiring that safeguard measures be exercised only on a nondiscriminatory basis is not a wise one and support the proposed change in the Safeguard Code that would permit non-MFN application of those measures. The nondiscrimination rule has, we believe, substantially undermined the effectiveness of the "escape clause" and has resulted in a proliferation of other kinds of actions not strictly consistent with the GATT. Thus, if a single country's exports are principally responsible for injury in an importing country, there is no need to interfere with other countries' exports.

2. We urge that, in considering special treatment for developing countries under our escape clause statute, the Committee draw a distinction between "import sensitive" and other products. In the ordinary case, it might be possible to provide developing countries with a greater share of an import quota instituted under an escape clause action than they would ordinarily have a right to expect. However, in import sensitive areas such as steel, we believe that it would be a serious mistake to encourage the creation of export oriented industries in developing countries by immunizing them against safeguard actions when their exports cause injury to the United States' industry. There are many indications that disruption of the international trade in steel in the 1980's will come principally from the developing world, many countries of which may be embarking on an imprudent expansion of capacity, which, we fear, will ultimately be destined for the United States market. We should avoid encouraging this development in any way. CFSB producers are especially concerned about rapid increases of shipments from developing countries, since the product they make is labor intensive, especially compared to production of more basic steel mill products.

3. We have not been advised of the language in the Safeguards Code that will apply to voluntary restraint agreements. We believe, however, that it would be a serious mistake to subject such agreements to the full panoply of conditions that might be applicable to a traditional escape clause action. By and large, those agreements have constituted a recognition by both importing and exporting countries that the more serious and disruptive measures that might be undertaken through an escape clause action should be avoided and that a more sensible solution can be developed through bilateral rather than unilateral action. If this avenue is closed off, except in those cases where escape clause action would be available to a domestic industry, there often would be little incentive for pursuing the bilateral approach. Voluntary arrangements have also been useful where more traditional approaches might not be available but where it is clear that some moderation of imports is required. We believe that this flexibility has helped to avoid confrontations and trade wars that could result from less flexible measures.

At the same time, we do believe that countries should not be able to avoid responsibility for the trade impact of voluntary restraint agreements simply by saying that they do not fall under Article XIX of the GATT. Where, as was the case with the EEC-Japanese steel agreements, voluntary arrangements have led to the channeling of excess capacity to third countries, responsibility for this diversion ought not be avoided by pointing to the voluntary aspect of the agreement.

D. GOVERNMENT PROCUREMENT

While your notice of February 8, 1979 did not refer expressly to the Code being negotiated on government procurement, we should like to offer one comment in that area. We understand that the Administration believes that the tradeoff between opening our own procurement practices to greater foreign competition and enabling American producers to compete abroad will result in a net benefit to our country. We appreciate this objective; however, we have serious reservations that, in practice, American producers will benefit significantly in competing for foreign government awards. Thus, we believe that the implementing legislation in this area should phase-in any changes in our own buy-American provisions and should require periodic reviews by appropriate congressional committees of progress by American producers to secure foreign government contracts. Only if we achieve the returns promised for American exports should we unconditionally open our government procurement market to foreign suppliers.

We thank you for the opportunity to submit comments on the matters above. If there is any further information you or your staff would like to have from our group, please let us know.

Sincerely yours,

IRVING J. BERKMAN,
Chairman, Government Relations Committee.

AMERICAN FARM BUREAU FEDERATION,
March 5, 1979.

Mr. MICHAEL STERN,
Staff Director, Senate Committee on Finance, Room 2227 Dirksen Senate Office Building, Washington, D.C.

DEAR MR. STERN: In response to Chairman Ribicoff's press release of February 8, 1979, inviting comments on certain aspects of the Multilateral Trade Negotiations, the American Farm Bureau Federation, which represents over 3 million families, submits these comments for inclusion in the printed record.

We have supported, and continue to support, U.S. trade negotiations in the Tokyo Round of the Multilateral Trade Negotiations, which are nearing conclusion in Geneva, Switzerland. We support extension of the countervailing duty waiver authority, which we believe is vitally important to the successful conclusion of the Geneva negotiations.

Chairman Ribicoff's hearing notice invited comment on the several codes being negotiated and on the necessary implementing legislation.

The code provisions of importance to U.S. farmers are: (1) The Code on Subsidies and Countervailing Duties; (2) The Standards Code; and (3) The Code on Safeguards.

We offer the following specific comments on sensitive areas of these codes and the implementing legislation:

1. Subsidized prices.—Adequate provisions should be made in the code and in implementing legislation to prevent the undercutting of market prices. Countries should have the right to countervail if their domestic prices are undercut by subsidized imports. In addition, adequate provision must be made for actions to address the serious problem of sales diversion and the disruption of trade in third markets by subsidized exports (as in the current case of EC wheat).

2. Health and inspection standards.—These should be used only to insure wholesome and sanitary products. The code and implementing legislation should preclude their use as trade restrictions.

3. Injury test.—We prefer the present system of not having to prove injury; however, we understand that an injury test will emerge from the present negotiations. The code and the implementing legislation should define injury, with reference to agricultural products, as interference with domestic agricultural support programs or other interference with the orderly marketing of agricultural products. It is most important that implementing legislation not cripple the operation of Section 22 of the Agricultural Adjustment Act, as amended, which has been vital to the well-being of U.S. agriculture.

4. Private advisors.—Effective use has been made of private expertise in developing the trade package. We believe that an advisory group or groups should be developed to make use of such nongovernmental resources in implementing and administering the results of the negotiations.

Sincerely,

JOHN DATT,
Director, Washington Office.

CATERPILLAR TRACTOR CO.,
March 5, 1979.

Mr. MICHAEL STERN.
Staff Director, Senate Committee on Finance, 2227 Dirksen Senate Office Building, Washington, D.C.

DEAR MR. STERN: Caterpillar Tractor Co. wishes to make the following statement with regard to Senate Finance Committee implementation of the Multilateral Trade Negotiations.

D. CUSTOMS VALUATION

It has been Caterpillar's experience, supported by court cases and IRS decisions, that inter-company price is the fair and effective method for assessing duty. Therefore, it seems reasonable that other U.S. government agencies would find inter-company price to be appropriate approach.

We recommend that U.S. legislation implementing the MTN make it clear that the U.S. considers inter-company price as the transaction value within meaning of MTN agreement.

E. LICENSING

We recommend that the Executive Branch of the U.S. Government be assigned clear responsibility to implement licensing provisions of the MTN.

Legislation implementing licensing provisions should provide method for companies to receive expedient hearing if unfairly treated by importing country.

We recommend the U.S. Commerce Department—in concert with the State Department—be assigned the responsibility of administering this hearing process, as well as the licensing provisions in general.

We appreciate the opportunity to submit this statement.

Sincerely,

HENRY W. HOLLING,
Governmental Affairs Manager.

K MART CORP.,
Troy, Mich., March 2, 1979.

Mr. MICHAEL STERN,
Staff Director, Senate Committee on Finance, Room 2227 Dirksen Senate Office Bldg., Washington, D.C.

DEAR MR. STERN: The Finance Committee's Subcommittee on International Trade Press Release of February 8, 1979, concerning implementation of the "Tokyo Round" of Multilateral Trade Negotiations, sets forth a selective list of MTN international draft code topics and issues on which the Subcommittee is interested in having comments from the private sector.

Although "consultation" comments upon aspects of yet-to-be-drafted-and-introduced implementing legislation, which may not by law in this instance be amended in committee or on the floor, are somewhat difficult to make, some principal comments on selected important issues itemized in the Press Release are set forth below.

A. COUNTERVAILING DUTIES

"(1) *Administering agency.*"—The "injury" determination portion of a proceeding should be handled by an Administrative Law Judge, probably at the USITC.

"(2) *Definition of 'injury'.*"—Legislation implementing the injury test clearly should not adopt or set up any "presumption" in favor of a complainant, or for that matter in favor of a respondent. "Preponderance" evidence standards should be applied by the factfinder in determining existence of injury to domestic producers, regardless of the causation standard(s) to be set by statute. As indicated in (1), *supra*, an Administrative Law Judge should preside over this quasi-judicial fact-finding determination.

"(*3*) *Definition of 'like product'.*"—Legislative definition of "like product" should, realistically, take account of market-place substitutability and directly competitive impact upon products which are very substantially similar in style, quality, and interchangeable ultimate use, again as determined under a "preponderance" evidence standard by an Administrative Law Judge.

* * * * *

"(*6*) *Judicial review.*"—Administration of the countervailing duty law should be fully subject to judicial review, based upon existing judicial standards of substantial evidence requirements, not upon de novo or other review standards. Application of certain reasonable time limits circumscribing judicial review would be meritorious.

Note: The implementing legislative proposals should not permit imposition of countervailing duties on any retroactive basis, which would redound to the prejudice of and denial of due process for American importers and retailers.

At the same time, any legislative proposal to authorize "provisional measures" such as payment of "estimated" countervailing duties or performance bonds upon a "preliminary positive finding that a subsidy exists" should be avoided, where a "preliminary positive finding" would (apparently) precede the initiation and conclusion of an investigation subject to due process of law and an evidentiary fact-finding by the administrative agency.

B. ANTIDUMPING DUTIES

"(*2*) *Relation to countervailing duty concepts.*"—The countervailing duty and antidumping laws with respect to causation and injury tests should not necessarily be the same, insofar as the countervailing duty injury test may, under the ultimate implementing statute, be a somewhat softer or lower standard. Without the text of implementing legislation being yet available, comment in this area is especially difficult. However, the antidumping law is in essence a foreign trade price discrimination law, with a properly strict injury standard (injury being determined only "by reason of the importation" of certain merchandise at less than fair value prices) which should not be softened so as to allow inclusion of apparent or inconclusive evidence of domestic industry economic factors. To be borne in mind, is the fact that regulatory policy considerations are conceivably quite different in the case of countervailing duty law where foreign governmental export subsidies of exports are involved as contrasted to antidumping law situations whereunder market price behavior of individual foreign firms is involved.

C. SAFEGUARDS

"(*4*) *Sections 201 to 203.*"—A preponderance evidence standard should be added by express legislative amendment to Section 201 of the 1974 Trade Act with respect to a determination by the International Trade Commission of "substantial cause" and its fact-finding of "serious injury, or the threat thereof, to the domestic industry producing an article like or directly competitive with the imported article." Also, implementing amendments should provide that this fact-finding determination be performed by an Administrative Law Judge in an evidentiary proceeding for the protection of the interests of, both, complainants and respondents. In this respect, such implementing legislative amendments would provide more reliable standards for ITC quasi-judicial practice and its development of a more consistently reliable body of precedental case law.

The proposed adoption of an expedited, or "fast track", Import Relief proceeding in the USITC which would in effect cut in half the present time limits for an ITC Import Relief determination proceeding, makes legislative adoption of a preponderance evidence standard, to be applied by an Administrative Law Judge, all the more important.

"(*6*) *Definition of 'domestic industry'.*"—Neither the yet-to-be-completed international codes agreement nor the implementing legislation should alter the definition of "domestic industry" under existing "Import Relief" statutory provisions (Sections 201–203 of the Trade Act of 1974) if such alteration or amendment would impair or reduce the existing necessary factual economic basis requirements for determining "injury."

D. CUSTOMS VALUATION

Care should be taken that neither the implementing legislation nor any regulation promulgation authority thereunder authorizes any change from the current FOB basis to a CIF basis for import merchandise valuation methods, for the reason that such a change would immediately and automatically increase costs of imported products and merchandise in a major, inflationary degree. This is due to the fact that duties would then be assessed upon extraneous insurance and freight costs in addition to the imported product's price. CIF would also result in wide disparities in duty assessment dependent upon whether East Coast or West Coast, or other, ports of entry were selected or necessarily utilized by importers and retailers. The result would be capricious and discriminatory duty expense impact upon small and large importers and retailers whose selling outlets are necessarily in or near a particular port of entry which is located at a greater distance and higher shipping cost point from given foreign source countries. At the same time, any attempted governmental shift from FOB basis of valuation to a CIF basis would constitute a "revenue raising" measure (or an "implementing revenue bill" under sec. 151 of the Trade Act of 1974) under Article I, Section 7 of the Constitution and require origination in the House of Representatives.

E. LICENSING

"(*1*) *Scope of Code*."—The international draft code and the implementing legislation should not impose any requirement or authorization that an importing country may require import licenses in order to administer any export restraint arrangements (such as Orderly Marketing Agreements or voluntary export restraint agreements) between the importing country an exporting trading partner.

"(*2*) *Implementation method*."—Clearly, the provisions of an international licensing code should be implemented through legislation rather than by Executive Order. This is so because of the very purpose of the draft international licensing code, which is now being negotiated, to reduce administrative "red tape" and unnecessary administrative impediments to trade. For the Congress to allow Executive or administrative rulemaking would not be in keeping with the stated underlying purpose of the Code.

Sincerely,

JAMES C. TUTTLE,
Antitrust and International Counsel.

STATEMENT OF BEDELL ASSOCIATES ON BEHALF OF DIAMOND/SUNSWEET, INC.

Mr. Chairman, because of the issues raised by the draft MTN codes which have surfaced recently, we believe these hearings are especially timely, and we are privileged to submit for the record our concerns and suggestions.

Our principal concerns center around the nature of those modifications of U.S. law required to implement any MTN agreement so that they are not inconsistent with the GATT, and just as surely protect the right of any citizen or company, not only an industry, to petition the U.S. government for redress of an alleged unfair trade practice by a foreign country in a timely way, by simple administrative process, and in the sunshine.

Our principal suggestions center around the need for the U.S. to recognize that much of its current $40 billion trade deficit results from structural trade barriers put in place by our major trading partners, the need to recognize that the MTN's will not resolve the U.S. trade deficits despite the heroic work of Ambassador Strauss and his colleagues, and to begin to hammer out a dynamic, imaginative, comprehensive and effective long term export policy.

Mr. Chairman, as you know, Diamond/Sunsweet, Inc., is a major marketer of dried fruit and tree nuts in excess of $200,000,000 this crop year, with nearly 6,000 growers producing the products with the help of many thousands more. As a measure of its commitment to export, typically more than 34% of product is distributed abroad; markets without which it couldn't survive.

Diamond/Sunsweet, Inc. seeks no special favor or concession from the United States or from any foreign country. It seeks only to continue to market commercially acceptable product anywhere in the world at competitive prices and quality, and to deny any foreign country any opportunity to interfere capriciously and unilaterally with such satisfactory and successful exports.

Our challenge to the EEC in late 1975 through a Section 301 proceeding concerning its attempt to install unilaterally a MIP Scheme (Minimum Import Price) and other patently illegal impediments to trade was eventually successful. It was due in large part to the unanimous vote on Senate Resolution 76 by the Senate Finance Committee and the full Senate, and a similar unanimous vote in the House on its Resolution 238 during the 95th Congress.

It might be concluded that, since our position prevailed and the EEC backed away from the MIP Scheme, the system did work effectively. We reject that proposition, for 2 reasons:

1. The process required 2½ years to complete, nearly all of which time was devoted to procedural delays by the EEC, and to what we perceived to be procedural shortcomings by the U.S. government.

2. Petitioners were not regularly informed in any meaningful detail as to the course of any negotiation with the EEC by mid-level government executives, during the entire procedure. We relied on the commercial trade in the EEC who in turn heard regularly from their elected and appointed representatives, in Brussel and other capitals.

In late summer of 1976, after 9 months of no solution or apparent prospect of resolution, Diamond/Sunsweet's European customers advised that the EEC had adopted a deliberate policy of "stonewalling" our protest made under Section 301. Only then did we initiate the somewhat unique action of calling on the Congress to express its concern that restrictive actions taken by the EEC against California exports "are a totally unwarranted distortion of international trade in processed fruits and vegetables. . . ." and that the "regulations are inconsistent with the spirit of the Downing Street Summit which was agreed to by leaders of the Member States of the European Communities."

We are grateful that both Senate and House affirmed unanimously those sentiments. They have had we believe a salutary effect on the MTN negotiations in terms of approach to codes of international behavior.

Yet, it is obvious that there was a breakdown in the dispute settlement mechanism as prescribed by GATT in this EEC matter and we believe the only effective method to assure prompt consideration and disposition of such trade problems is to establish a simple, automatic adjudicatory process, by law, and by which means the U.S. can effectively "protect the interests of U.S. producers and exporters against unfair trade practices of foreign countries" and to preserve for the U.S. the ability "to act unilaterally in any situation where it is unable to obtain redress through the GATT against practices which discriminate against or unreasonably impair export opportunities," in the words of Chairman Ullman during the House debate on the Trade Act of 1974.

In that connection, we invite the committee's attention to S. 264 which is designed to improve administrative practices in connection with foreign country unfair trade acts and including Section 301 revision. The bill has bi-partisan support and additional bills will be introduced in the House on the same or similar basis.

For most trade disputes, we think it is sufficient to allot 30 days for inquiry, an additional 90 days for an investigation if warranted, and one additional 30 day period for the STR to recommend to the President a course of action against the offending party unless in the national interest the President must decline. All these proceedings are to be published in the Federal Register as they occur, and are to be conducted in parallel with the GATT signatories' requirement for consultation.

With your permission we would like to turn to the matter of a long term export policy.

We believe that this country has been paralyzed far too long as a result of the shock of the OPEC cartel action 5½ years ago. At first OPEC was perceived as a cartel that couldn't last because all cartels are uneconomic and must fall of their own weight. Then, it was concluded that conservation would make the difference in trade balance. Later it was concluded that dollar devalaution would cause U.S. exports to be more competitive and consequently rise. Concomitantly with this latter thought the international exchange rate mechanism would of course become, or continue as, the sole arbiter of international exchange of goods.

With only minor swings, the trade balance continues to be in substantial deficit.

We submit that our present $40 billion export trade deficit *is structural and it is long term*. Despite the heroic efforts of Ambassador Strauss and his colleagues, no MTN agreement can or will be expected to have significant impact on the trade deficit. To overcome a deficit of present order of magnitude requires bold and imaginative measures; new economic leadership and initiatives.

We commend to this Committee the perceptive language of the Task Force Report of the Trade Subcommittee of House Ways & Means Committee published January 2, 1979, and which was chaired by Congressman James Jones of Oklahoma.

While the Report deals only with Japan, much of the concept and philosophy expressed has broad application and relates to activities of most of this country's trading partners. We commend as well the typically well-reasoned testimony of Robert A. Best before this subcommittee on the same subject February 21, 1979.

For our part we summarize our concerns as follows:

1. A substantial acceptance is required in the public and private sectors that the present export trade balance is structural and long term. Precious time has already been lost being content that the OPEC price policy caused the U.S. deficit, in face of the Japan and German economic models done without oil and coal of their own.

2. A far deeper and more perceptive understanding is required of the means by which our major trading partners have refused to yield to the once fundamental theory that international exchange rates are and ought to be the final arbiter of trade flow, and capital flow.

3. A broad understanding is yet to evolve regarding the fundamental nature of an export trade policy, its ingredients, thrust, values, measurements of progress, its impact on improving the American way of life.

We firmly believe no time should be lost, in the public sector and the private sector, to identify the fundamentals of a comprehensive, dynamic, aggressive and purposeful export trade policy. Set goals, set time tables, set the lawful means, organize the resources and get on with the job.

Once there is recognition of the structural barriers to U.S. exports by public sector executives, and administration policy-makers, this country can move forward with an effective policy, and establish the administrative mechanism to make it work.

Some of the major ingredients of a bold export policy are among the following:

1. Modification of anti-trust laws which impede sale of U.S. products abroad.

2. Provision for selective tax incentives to those companies with demonstrated capacity and will to penetrate foreign markets.

3. Expansion of foreign credit availability from government sources to include a broader cross-section of American Industry and agriculture.

4. Improved access to capital for medium-sized U.S. companies capable of expanding exports.

5. Expand effectiveness of U.S. overseas personnel responsible for trade promotion by increased ability to provide U.S. companies with important and perceptive market data.

6. Provide special rules for export-oriented companies to be free from U.S. restrictions which interfere with American exports.

7. Provide sufficient tax incentives to American business and agriculture for the purpose of re-establishing this country's pre-eminence in high technology research and development.

How best to meet these general objectives? Our inclination is to place in statute form these objectives without the need to put all foreign trade and investment in one more giant government department. We worry that any such new department would be staffed by many of the same executives now in place elsewhere and that endless bureaucratic warfare would follow organization of such a department, making contructive administration a hope and wish not a reality.

Yet, if the statutes can be clearly enunciated, and if goals and controls can be carefully crafted and the strictest oversight by the Congress made certain, then we believe the overwhelming need for substantially expanded exports translates into a new department. Therefore, we support S. 377, the Ribicoff-Roth bill. There may yet be time for completion of the current MTN round and development of a new export trade policy.

We believe them both to be worthy efforts for completion in the first session of the 96th Congress.

Thank you for this opportunity to express our views.

Statement of the National Retail Merchants Association

The following statement is submitted by the National Retail Merchants Association (NRMA) in connection with consideration by the United States Senate Finance Committee's Subcommittee on International Trade of implementation of international trade agreements currently being negotiated. NRMA is a nonprofit, national trade association of approximately 3,500 members that operate more than 35,000 department and specialty stores throughout the nation. NRMA's members sell more than $95 billion in goods and services annually, both domestic and imported, and would be directly and substantially affected by any legislation implementing the international trade agreements under consideration. Therefore, NRMA has taken this opportunity to set forth its views on the issues raised in the Subcommittee's February 8, 1979 press release with which it is particularly concerned.

NRMA notes that some of the agreements under consideration are not yet in final form and that specific implementing legislation has not been drafted. Accordingly, NRMA hopes an opportunity will be given to make additional comments, if necessary, once the agreements have been completed and implementing legislation drafted.

The international trade agreements currently under consideration are the result of the Multilateral Trade Negotiations (MTN) conducted in Geneva for approximately the last five years. U.S. participation in these negotiations was authorized by the Trade Act of 1974, which conferred upon the President broad new authority to negotiate trade agreements involving the reduction of tariffs and the elimination of nontariff barriers to trade. The object of the MTN was the "development of an open, nondiscriminatory, and fair world economic system." NRMA wholeheartedly endorsed this objective at the time the Trade Act of 1974 was enacted and continues to do so. However, NRMA is seriously concerned that the purpose of the negotiations, to provide for the harmonization, reduction, or elimination of trade barriers, will be substantially undermined by concessions to certain protectionist interest groups.

THE BENEFITS OF FREER TRADE

NRMA member employ more than 2 million people and provide the American consumer with a variety of competitively priced merchandise. Because the success of our members depends upon their ability to recognize and supply the needs and desires of U.S. consumers, NRMA recognizes the many benefits to the American economy and the U.S. consumer which would result from foreign trade. An open and fair world trading system enables our members to offer consumers the best possible value for their retail dollars. It provides merchandise which consumers might not otherwise be able to obtain at a reasonable price.

Import competition insures that U.S. industries remain productive and efficient, enabling the U.S. consumer to benefit, whereas restrictions on trade are adverse to the interests of the American consumer. Moreover, trade restraints reduce initiatives for efficiency among domestic producers and the availability of foreign markets within which to sell U.S. produced goods.

The demands of certain special interest groups to restrict imports and "protect" American industry and jobs from foreign competition are far too simplistic and neglect to consider the realities of our economy. Protectionism ultimately results in loss of jobs rather than increase in domestic employment. Inflation is this country's number one economic problem and if unchecked results in loss of employment during recession. Imports play a vital role in stemming inflation by providing the American consumer with substantial savings.

A recent study (attached), Imports and Consumer Prices: A Survey Analysis, prepared by William R. Cline, Senior Fellow, the Brookings Institution, graphically demonstrates that consumers greatly benefit from imported products. That study concluded that consumers received a direct savings from imports of more than $2 billion annually. The imported products surveyed were found to be an average of 10.8 percent less expensive than comparable domestic products. In the case of the low income consumer, the group hardest hit by inflation, the savings were as much as 13.1 percent. In addition, the study demonstrates that imports indirectly benefit consumers through their pro-competitive effect in restraining prices charged by domestic producers. As recently stated by A. E. Kahn, Chairman of the President's Council on Wage and Price Stability, "[p]rotectionism and restrictions on competition typically mean higher prices and diminished pressures for efficiency, which we can ill afford at any time, but least of all in time of inflation."

NRMA recognizes that international competition may sometimes pose adjustment problems for a domestic industry. In that event, NRMA agrees with the study, that programs to assist individual domestic industries should rely on approaches such as adjustment assistance, rather than further quota or tariff restrictions. These alternative methods are necessary to avoid the inflationary consequences of restrictions on imports. NRMA supports the need for a revitalized adjustment assistance program to assist firms faced with heavy import competition, rather than import relief measures resulting in government-imposed decreases in trade which are inflationary, reduce real income and hurt American workers in export-oriented businesses as well as those who are dependent upon imports for their livelihood.

NRMA also supports programs which will eliminate foreign trade barriers to the exportation of U.S. products and will enhance productivity of U.S. industry to enable it to compete more effectively in foreign markets. To the extent that the Government's "Textile Program," recently negotiated with the domestic industry, meets these objectives, NRMA believes it has merit. By contrast, NRMA opposes the essence of the program, which is to place major additional restrictions on imports of textiles and wearing apparel, thereby adding to our nation's inflation problem. Aspects of the textile program such as tighter quota controls, and resumption of pre-MTN high tariff levels,[1] would substantially harm the American consumer. A reduction of imports will not only add to inflation, it will decrease the domestic industry's incentive to compete. NRMA believes that the trade restrictions contemplated in the textile program are unnecessary. Current U.S. tariffs on textiles and wearing apparel are the highest of any industrialized nation.

In short, capitulation to protectionist pressures may result in serious injury to our economy. In this time of rising inflation, imported goods present an effective means of restraining price increases and stemming inflation. NRMA does not condone unfair practices in international trade and believes that appropriate steps should be taken to protect U.S. industry injured by such practices. However, fair and vigorous competition is the cornerstone of our economic system and should be promoted in every way possible. NRMA hopes that Congress will take not action which will adversely affect the American consumer, impede the freer flow of trade or add to our current inflation problem.

THE MULTILATERAL TRADE NEGOTIATIONS

Against this background as to the benefits of freer trade, and the vices of protectionism, NRMA has the following comments on possible legislation to implement the trade agreements under consideration by the Subcommittee.

COUNTERVAILING DUTIES

1. Administering Agency

NRMA strongly urges the Subcommittee to refrain from recommending any change in the administration of the countervailing duty law at this time. This issue should be considered separately from the current trade package; the mechanics for administration of the law may be considered after Congress takes action on the various trade agreements.

In any case, NHMA believes it would be counter-productive to shift the responsibility for administering the countervailing duty law from the Treasury Department to other agencies. The Secretary of the Treasury and Treasury Department personnel have developed considerable expertise in administering the countervailing duty law since the turn of the century. This expertise has been recognized by the United States Supreme Court in *United States* v. *Zenith Radio Corporation*, 437 U.S. 443 (1978), *aff'g*, 64 CCPA 130, C.A.D. 1195 (1977). A shift of responsibility to another agency or a newly created agency would involve considerable loss of expertise. Just as the courts are "woefully ill-equipped to undertake unaided the complex economic analyses required to determine whether a bounty or grant has in fact been conferred as a result of a particular governmental action,"[2] agencies unfamiliar with the administration of the countervailing duty law may find the task difficult if not impossible.

---

[1] This may be an illusory threat since, based on available data, tariff reductions in the wearing apparel categories are modest.

[2] *United States* v. *Zenith Radio Corporation*, 64 CCPA 130, at pp. 138–139, C.A.D. 1195 (1977); *aff'd*, 437 U.S. 443 (1978).

2. Definition of "injury."

NHMA supports the incorporation of a "material" injury test, conforming with the proposed international code, into any countervailing duty legislation as to both dutiable and duty-free merchandise. The present countervailing duty law is inconsistent with the parallel provision of GATT, which provides for the imposition of countervailing duties only when the imported product is causing material injury to a competitive industry. NRMA believes the time has come to conform the U.S. standard to GATT after long years of nonconformity. Government subsidization of exports which do not injure American industry benefit the American consumer by providing quality merchandise at a reasonable price. Inserting a "material" injury standard would avoid the unwarranted imposition of countervailing duties in cases in which there is no recognizable injury to a U.S. industry. This standard would preserve the benefits of foreign competition for U.S. consumers, would generally facilitate future trade negotiations and would insure that trade restrictions are imposed only when necessary to protect legitimate interests.

In addition, while NRMA supports relief for U.S. industries injured as a result of foreign government subsidies, it believes that the granting of relief should be based on a determination that the alleged injury is directly caused by the actions of the foreign government in subsidizing exports. Where injury to U.S. industry is only partially caused by subsidization of exports, imposition of countervailing duties is unwarranted. In many cases, the cause of injury to U.S. industry may be linked to factors other than subsidized exports—such as failure of an industry to utilize the latest advances in technology, changed economic conditions or shifts in consumer demand. Imposition of countervailing duties in such circumstances may amount to U.S. Government subsidization of possibly inefficient U.S. industry. Requiring the U.S. consumer to pay prices inflated by countervailing duties would be in appropriate under such circumstances. For these reasons, NRMA urges the inclusion in any injury test of a requirement that foreign subsidies be the "principal" cause of injury as the basis for any affirmative determination.

2A. Transition Provisions

As the Subcommittee is well aware, the imposition of countervailing duties has in some cases been waived pursuant to authority granted the Secretary of the Treasury by the Trade Act of 1974. Although this authority has expired, legislation renewing it until September 30, 1979 recently passed the House. The treatment of this waiver must be addressed in any legislation implementing the countervailing duty code. In that regard, NRMA urges the Subcommittee to recommend the following. After providing the exporting country a brief period of time in which to make representations as to changes in the subsidy it has made since Treasury's final determination, the law should require an injury determination under the same procedures as applied to new complaints. If injury is found to exist, countervailing duties would be imposed on entries made on or after a date fixed in the implementing legislation.

3. Definition of "like product"

In connection with the Code's use of the term "like product" for purposes of determining injurious effects of subsidies, NRMA believes the countervailing duty law should define that term as "merchandise which is identical in physical characteristics." This would be consistent with the meaning of "like" product under U.S. Customs laws and would insure that the law would be applied only where injurious effect could exist. In the alternative, the countervailing duty law should incorporate the language currently contained in Section 201 of the Trade Act of 1974—"like or directly competitive," since that standard is a familiar one.

4. Duties smaller than the amount of the subsidy

To allow the mere technical finding of a "bounty or grant" to force automatic imposition of a countervailing duty in the "net" amount of such "bounty or grant" would promote a rigid system which does not allow for judgment as to economic impact and would inhibit U.S. flexibility in responding to trade problems. Therefore, NRMA urges that the countervailing duty law contain a provision which would permit the Secretary, in his discretion, to require countervailing duties in an amount less than the "net" subsidy where the Secertary determines that such amount would "remove the injury." Such authority would be consistent with the code and the generally remedial purpose of the countervailing duty law. Further, it would provide foreign countries with sufficient incentive to eliminate any source of injury to U.S. industry and would soften the unduly harsh effect that countervailing duties have on innocent retailers and American consumers.

5. Termination of investigation

NRMA also urges the Subcommittee to recommend a procedure whereby a countervailing duty proceeding may be terminated under the appropriate circumstances. Again, if the foreign government agrees to phase out the subsidy in a reasonable period of time, makes concessions, or otherwise removes the cause of injury to U.S. industry, there is no sound reason for the continuation of an investigation which itself creates great uncertainty in the orderly conduct of business and generally distorts trade.

6. Retroactivity of countervailing duties

NRMA strongly opposes any implementing legislation which would permit imposition of countervailing duties on a provisional or retroactive basis. The chilling effect of such a practice is obvious. The mere existence of an investigation creates great uncertainty for American retailers. Retroactive or provisional countervailing duties would add to that uncertainty. The mere potential of retroactive duties could cause higher prices or cessation of imports—even if no subsidy is ultimately found. Retroactive relief, where subsidy and injury are found, would in no event remedy the injury. In short, there is nothing to be gained, and much to be lost by the public, through retroactivity. We urge the Subcommittee to recommend retention of the present mode of applying affirmative determinations.

ANTIDUMPING DUTIES

NRMA believes the question of amendments to the Antidumping Act of 1921 to be a complex one and suggests that it is not now the appropriate time for such review. However, within the context of the Subcommittee's Feb. 8, 1979 press release, NRMA wishes to make the following points of a general nature:

1. Administering Agency

Under the present statutory scheme, each agency is responsible for a specific function which it is best suited to perform based on its area of expertise. The Treasury Department, through the Customs Service, is the agency best equipped to make the technical calculations necessary in an antidumping proceeding since the normal entry procedure readily provides Customs with much of the information necessary to make determinations such as "foreign market value," "exporter's sale price," and "purchase price." Indeed, much of the same data is furnished Customs as part of that agency's role in ascertaining and assessing tariff duties. Thus, NRMA believes it would be counter-productive to shift responsibility for administration of the Antidumping Act to another agency and urges the Subcommittee to refrain from such recommendation.

2. Relation to countervailing duty concepts

To the extent that the countervailing duty law will be modified to include a "material injury" requirement, NRMA supports conforming amendments to the Antidumping Act to require an affirmative determination of "material injury" to support a dumping finding. As in the case of any amendments to the countervailing duty law, NRMA suggests that the Antidumping Act provide for a strong causal link between the alleged sales at less than fair value and alleged injury to U.S. industry. In that connection, NRMA urges the Subcommittee to recommend amendments to the Antidumping Act's injury requirement to provide, as a prerequisite to relief, that any injury to U.S. industry be "principally caused" by less than fair value sales. This is necessary to reflect the possibility that the injury to U.S. industry, if any, may have resulted from factors other than dumping, in which event the imposition of dumping duties would be inappropriate.

SAFEGUARDS

1. Selective action

NRMA strongly opposes any implementing legislation on emergency import measures which would permit application of import restrictions selectively against a particular exporting nation. A departure from most-favored-nation principles would be contrary to GATT and the stated purpose of the Trade Act of 1974, "to promote the development of an open, *nondiscriminatory*, and fair world economic system."

The selective application of safeguard measures could harm developing nations and would exacerbate the deleterious effects of restrictions on trade. It would result in consumers more readily losing the benefits of a free and open market, and inhibit their ability to obtain high quality merchandise at a reasonable price. Nations subjected to selective safeguard measures might well retaliate by establishing barriers to exports of U.S. products. In view of the President's authority to enter into Orderly Marketing Agreements with specific nations, selective application of import restrictions is unnecessary and NRMA urges the Subcommittee to recommend against such approach.

It should be noted that in light of the likelihood of increased U.S. exports, a clear danger exists that selective safeguard measures may be used to discriminate against U.S. exports. If the United States agrees to the selective safeguard approach, NRMA urges that imposition of selective safeguards be permitted only pursuant to international approval and continuing international surveillance. To prevent abuse, utilization of selective safeguards should require: (1) agreement of the exporting country; (2) prior recommendation of an international surveillance body; and (3) extraordinary circumstances requiring selective action.

2. Section 201.

NRMA urges the Subcommittee to recommend an amendment to Section 201 which would allow the imposition of import restrictions whenever increased imports are the "principal" cause rather than, as at present, "a substantial" cause of domestic injury. As previously noted in our comments relating to countervailing and antidumping duties, injury to U.S. industry may relate to many factors other than import competition. Where increased imports are not shown to be the primary cause of injury, resort to quotas or tariff increases is unjustifiable, especially in view of the inflationary consequences of such action. In short, the unwarranted imposition of import restraints should be avoided. NRMA believes that the "principal" cause standard would eliminate any potential abuse of the purpose of Section 201.

In addition, NRMA suggests that the implementing legislation amend Section 201 to require the ITC, in making import relief recommendations to the President, to consider the possible impact of such relief on domestic retail prices. At a time when inflation is our chief economic problem it is imperative that import relief decisions take this crucial factor into consideration.

Customs Valuation

NRMA supports the valuation code and urges the Subcommittee to recommend legislation implementing the code. In particular, we strongly endorse the concept of transaction value since that concept more closely conforms with commercial reality.

While the valuation code provides for the application of code provisions under either an F.O.B. or a C.I.F. basis, NRMA urges the Subcommittee to recommend implementing legislation providing for valuation only on an F.O.B. basis as is currently the practice in the U.S.

NRMA favors the repeal of the American Selling Price ("ASP") basis of valuation, specifically as applied to footwear classifiable under item 700.60, TSUS. The ASP basis of valuation has long been repudiated. In connection with repeal of the ASP basis of valuation, NRMA opposes adjustments of *ad valorem* rates on items currently subject to ASP appraisement to levels which would generate higher duties than are currently being collected on such items. Further, NRMA opposes increased tariffs on items classifiable under an ASP category, but not currently subject to ASP appraisement because of the absence of like or similar merchandise in the U.S. Any increases in duty should relate only to items currently appraised on an ASP basis.

NRMA believes that the increased rates of duty on footwear items are contrary to the policy of the Trade Act of 1974 which conferred upon the President broad authority to negotiate agreements involving the reduction of tariffs and elimination of trade barriers. NRMA opposes any increase in effective levels of duty as being highly inflationary, and urges the Subcommittee to recommend against tariff increases in the ASP footwear category.

TIME LIMITS

NRMA understands that proposals have been put forth to greatly shorten the time permitted for investigations under the Antidumping Act, Countervailing Duty Law, and the Escape Clause. We believe that any legislation which would reduce the already expeditious time periods under these Acts is unnecessary and counter-productive. To be sure, all of these areas involve complex issues and should not be the subject of legislation which would result in determinations being based upon an inadequate factual inquiry.

In an antidumping proceeding the Secretary of the Treasury must determine whether merchandise is being sold at less than fair value. An initial decision as to whether an investigation should be initiated must be made within 30 days after a complaint is filed. Once an investigation is instituted, a tentative determination as to whether there is a reason to suspect sales at less than fair value must be made within six months (or nine months in "complicated" cases). Exporters who receive dumping questionnaires are generally given 30 days to respond. In some cases a 15-day extension is granted. Considering the extensive financial and technical information usually requested by the Customs Service which requires compilation of masses of documents often requested in a form totally unfamiliar to foreign companies, the current time limits are far from excessive. Placing additional pressure on the administering agency may ultimately result in determinations based on alternative methods which do not reflect actual transactions under consideration and which do not comport with the requirements of the statute.

Similarly brief time periods are provided under the countervailing duty law. Under Section 303(a)(4) of the Tariff Act of 1930, as amended, the Secretary is required to make a preliminary determination six months from the date a petition is filed and a final determination within twelve months.

With respect to proceedings under the Escape Clause, there is no demonstrable need to shorten the already expeditious time limits. While complainants have years to prepare their complaints, importers and exporters generally have no practical notice that a complaint is being contemplated and, therefore, no opportunity to prepare their cases properly. A reduction in time limits would further aggravate this unfair situation.

In sum, NRMA urges the Subcommittee to reject as being unnecessary and inequitable any proposals for implementing legislation which would limit existing time periods for conducting investigations or reaching determinations. Further, any legislation shortening existing time periods should provide extensions of time in complex cases as is presently the practice in antidumping proceedings. Such flexibility is necessary for the fair and efficient enforcement of our international trade laws.

Advisory Committees

NRMA understands that the Administration is considering continuation of the advisory committee process under which representatives of the private sector participated in the MTN. NRMA participated in this process and would welcome the opportunity to continue in this capacity. Retailing is an important sector of the U.S. economy and should be represented in any continuing advisory process.

CONCLUSION

Imports play a vital role in halting the ravaging effects of inflation by providing the American consumer with direct savings through lower priced merchandise and indirect savings through encouraging domestic price competition. Reduction of tariffs and other barriers to trade will save the American consumer billions annually, whereas additional import restrictions will exacerbate inflation and will create disincentive for U.S. industry to improve its competitive position through increased efficiency. The results of the Multilateral Trade Negotiations will be with us for a long time. NRMA is confident that Congress will consider all factors and resist protectionist urgings which would have damaging effects on the economic health of our nation and its citizens.

IMPORTS AND CONSUMER PRICES: A SURVEY ANALYSIS

(By William R. Cline, Senior Fellow, The Brookings Institution*)

ACKNOWLEDGEMENTS

This study was prepared for the American Retail Federation and the National Retail Merchants Association. The Survey Research Laboratory of the University of Illinois carried out the sample survey on import and domestic prices, under the supervision of Robert Ferber and Matilda Frankel.

* The views expressed in this study should not be attributed to the Trustees, Officers, or other staff members of the Brookings Institution.

1. Introduction

It is a critical time for public policy on imports. In recent years there have been several protectionist actions. The United States has negotiated voluntary quotas on imports of shoes from Korea and Taiwan, on color television sets from Japan, and on specialty steel. The administration has implemented a program of trigger prices for steel that, in effect, limits steel imports (though not as severely as alternative measures might have done). The United States has renewed bilateral agreements on import quotas for textile products under the MultiFibers Arrangement, which together with the Long Term Arrangement for cotton textiles, imposes quotas on imports from 18 principal supply countries. Moreover, there are calls for much more extensive protection against imports. Largely the result of high unemployment stemming from the worst recession since the 1930s (in 1974–1975), these protectionist forces may derive additional support from concerns about the sharp decline of the dollar and the large trade balance deficit experience in 1977 and 1978.

Yet there is another economic problem that is paramount for the country: inflation. For several months in 1978 the consumer price index accelerated to annual inflation rates on the order of 10 percent. The administration's program of wage and price guidelines, and its package of measures announced on November 1, 1978 to deal with the declining dollar and inflation (including an increase in the discount rate by a full percentage point) are ample evidence that at this juncture inflation is the country's number one problem.

Imports play a vital role in fighting inflation. This study seeks to examine, perhaps more rigorously than ever before, one aspect of that anti-inflation role: the extent to which imports provide a savings to consumers by making available products at prices below those of comparable domestic products. To the extent that imports do restrain inflation, the calls for increased protection directly jeopardize the prospects for dealing with the most serious economic problem, inflation. Protection would aggravate inflation in two ways. First, by reducing the availability of cheaper imported goods (if they are cheaper—the main subject of this study) increased protection would cause a shift to more costly domestic supply. Second, by limiting the availability of total supply, protection would lead to an indirect rise in prices, as domestic firms raised their prices and consumers paid more in order to reach a new equilibrium between smaller supply and, therefore, smaller demand (which could only be reduced by the discouragement to consumption coming from higher prices).

Some advocates of higher protection maintain that imports do not restrain inflation because retailers do not pass on to consumers the savings available from imported products, but pocket large profits instead. As evidence these critics cite a recent study by the Library of Congress that implied that retail stores charge higher markups on imports than on domestic products.[1]

These critics miss a major point about the inflation-retarding role of imports. Even if imports sell at identical prices to consumers as domestic products, the very presence of imports causes the prices for domestic goods to be lower than they otherwise would be. For products with monopolistic tendencies, imports provide a source of competition that restrains prices domestic firms can charge. For products with competitive organization, imports hold down prices simply by virtue of the fact that they raise total supply, causing supply to equate with demand at a lower price (that is, a price where consumers will buy enough more to absorb the added supply).

However, a legitimate empirical question is whether indeed imports are cheaper than domestic products of comparable quality. If they are, then there is a direct anti-inflationary contribution of imports in addition to their indirect role of increasing supply.

The purpose of this study is to examine whether imports are cheaper to the consumer than domestic goods of comparable quality. The method applied in the study is that of survey analysis. This study employs a large sample survey of prices for imports and domestic goods. The Survey Research Laboratory of the University of Illinois carried out the survey in retail establishments of all major types and in diverse geographical locations. The survey collected price data on well specified products, providing the maximum possible assurance that the quality of product was comparable for domestic and imported goods.

The survey approach is far preferable to the investigation of markups as a way

---

[1] U.S. House of Representatives, Committee on Ways and Means. Library of Congress Study on Imports and Consumer Prices (Washington, D.C.: U.S. Government Printing Office, 1977).

of determining whether the consumer receives a savings from cheaper imports. The survey examines directly what the consumer actually pays. By contrast, information on product markups provides only an indirect hint about whether the consumer pays lower prices for imports. Moreover, information on markups is extremely fragmentary. Furthermore, it is insufficient to determine whether markups are higher on imports than on domestic products. An accurate analysis must consider in addition whether any such higher markup exceeds the increment required to cover higher costs associated with purchase abroad (such as the lack of the option of returning merchandise, the travel and research costs required to establish reliable foreign suppliers, and so forth).[2]

Section 4 below sets forth the empirical results of the sample survey on import prices compared to domestic prices. First, however, section 2 explores the theoretical logic behind the analysis, and section 3 describes the nature of the sample survey itself.

2. *Theoretical Issues*

Before turning to the sample survey, it is necessary to discuss in theoretical terms whether one would expect imports to be cheaper than domestic products. First, the discussion clarifies that the availability of imports makes prices lower even if imports sell at the same prices as domestic goods. Second, "product differentiation" is explored as a general reason why import prices could differ from (and be cheaper than) domestic goods of comparable quality. Third, the discussion examines the case of imports under quotas, and shows that imports could be cheaper than domestoc supply because some of the "rent" generated by the presence of quotas could reach the consumer.

2.1. *Availability of Imports and Equilibrium Price*

It is possible to use elementary supply and demand analysis to show that the availability of imports reduces prices even if the imported product sells for the same price as the domestic product. Consider a graph of supply and demand (like those in introductory economics text books), Figure 1.

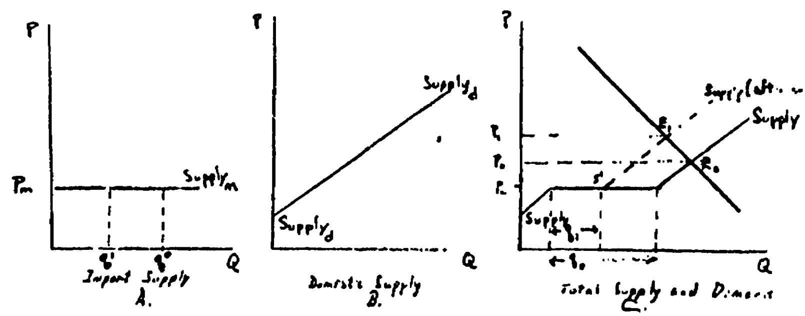


Figure 1

Import and Domestic Supply

The three graphs show price on the vertical axis and quantity on the horizontal axis. Part A shows the import supply at a constant and low purchasing price of P_m. Part B shows the domestic supply curve, rising from low price for low quantity to high price for high quantity. Part C shows total supply—the combined supply from imports at price P_m and domestic production ranging from the lower left to upper right. Now at the outset suppose a quota of q_0 is allowed for imports, then the horizontal portion of the total supply curve along price P_m will be the amount q_0 coming from imports. The total supply curve begins at the

[2] It must be added that, in the case of the Library of Congress study, the information available on markups did not meet criteria for rigorous empirical investigation. There were no national or survey data on actual markups. Most of the information reported stemmed from oral statements of individual observers' perceptions of usual practice. In the section of the study concerning apparel, the Library of Congress study cited testimony of four representatives of labor unions, and no representatives of the retail industry. In the section concerning shoes, the study referred to two testimonies by representatives of the American footwear industry, one empirical study by the footwear indsutry, and one study prepared for the footwear retail industry. It is possible that by selecting seven out of eight reference sources from the side of labor and domestic procedures, the study may have obtained an unbalanced view of markup practices by the retail industry for imports as opposed to domestic goods. *Ibid.*, pp. 2–6.

left with a small initial portion of low cost domestic supply; it then continues horizontally at price P_m for the amount q_o of imports under quota; then it rises at higher cost for domestic supply.

With a total demand curve of DD (showing little quantity demanded at high price, much demanded at low price), the initial supply-demand equilibrium occurs at E_o where the supply and demand curves cross. At this point the price is P_o for all goods, domestic and imported (and importers get a windfall gain equal to the excess of P_o over P_m, though in this model the consumer pays the full P_o).

Now suppose the import quota is cut in half to q_1. The effect will be to cut in half the horizontal length at price P_m. As a result, the total supply curve for domestic supply costing more than P_m will shift over to the left by the amount of reduction in imports. The new equilibrium of demand and supply will occur at E_1, where price is higher (P_1).

Therefore the standard analysis of supply and demand shows that when import supply is cut back, market prices will rise even if the price paid by the consumer is the same for both imports and domestic goods.

2.2. *Product Differentiation*

The price of imports may differ from the domestic price, however. The simple textbook diagram of supply assumes that all supplies of a "good" are identical. In reality different supplies are different in some degree. Even in extremely homogeneous products, such as wheat or corn, there are numerous grades reflecting different properties and differing market tastes.

Imports almost by definition are affected by "product differentiation," the term designating differing perception by consumers for similar products. This differentiation makes it possible for the import to sell at a different price from the domestic good. Furthermore, there is not necessarily an implication of superiority or inferiority of an import because it sells for more or for less than the domestic product. The case of imported automobiles illustrates this point most graphically. Several years ago the Mercedes Benz and the Datsun (for example) sold at reasonable or even bargain prices relative to their American competitor cars (such as the Cadillac and the economy Ford, respectively). Now, after massive appreciation of the German mark and the Japanese yen, these imports sell for much higher prices relative to the American substitutes than they did before. No one would argue that suddenly the quality of German and Japanese automobiles has become superior and the quality of American automobiles has become inferior. Instead, the changing relative prices reflect changing supply and demand of separate, differentiated products.

Consider the example of automobiles in graphical terms. Suppose parts A and B of figure 2 show the supply and demand for a domestic good and an imported good that, by objective criteria (horsepower, styling, durability, etc.) are comparable. Suppose that at historical period o the import is at low cost, and sells for $P^o{}_m$, well below the domestic price. An analysis of import price relative to domestic at that point will find imports cheaper.

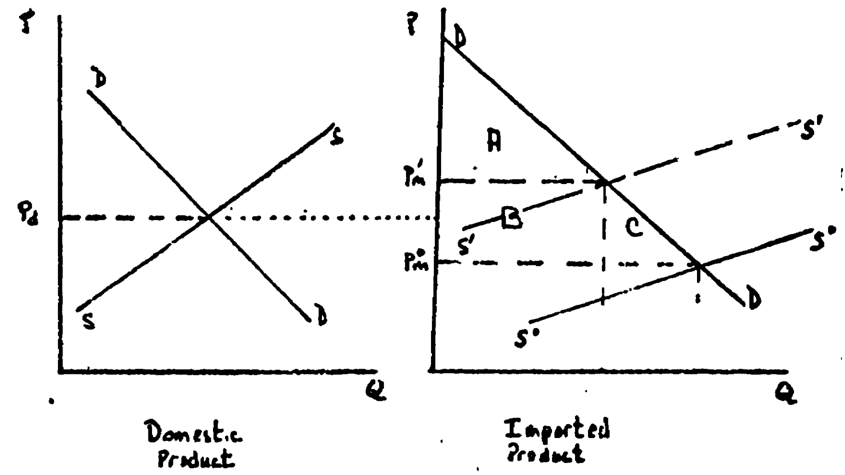


Figure 2

BEST COPY AVAILABLE

Now suppose that at a later historical period foreign supply becomes much more costly. The supply curve for imports shifts to S'S' and the domestic demand for that imported item falls from Q_o to Q_1. The new imported price, P'_m, is shown to be higher than the domestic price. The quality of the imported good relative to that of the domestic good has not changed. What has changed is that fewer people are able to purchase the import. A measure of the loss of consumer benefit from the new, higher price of the import is the loss of so-called "consumer surplus." This concept refers to the total of consumer savings of what they actually paid compared to what they would have been prepared to pay, and it equals the area under the demand curve but above the market price level. As shown in the diagram, when the import price rises, consumer surplus declines from area A+B+C to area A alone.

In summary, the analysis of product differentiation suggest that even for products of comparable quality the import price may differ from the domestic price, and that moreover this difference may switch from negative to positive even though there is no change in relative quality of the two products.

At the level of actual experience, it seems likely that precisely this type of shift has occurred for imports from Europe and Japan. Once a great bargain, they may in many cases be as expensive as, or even more expensive than, domestic supply—because of changing exchange rates. Following this reasoning, it is probably supply from newly industrializing countries, such as Korea, Taiwan, Brazil, and Mexico, that still provides bargain prices for the American consumer (and still provides the larger area of consumer surplus). These newly industrial countries still have low labor costs, and increasingly they have the skilled manpower available for manufacturing. Moreover, imports from these countries are often carried out by multinational corporations (either as producers or purchasers), providing assurance that quality control characteristics necessary for the American market are met. This question is an empirical one, and is examined below. The main point here is that product differentiation provides a theoretical basis for accepting evidence that the price of an imported good may differ from the price of a domestic good even though there is no objective quality difference between the two.

2.3 *Quotas*

There is a second reason why imports may be cheaper than domestic supply even when quality is comparable. For imports under quotas, the market process does not "clear." Low cost foreign supply is available only in the limited quantities. As a result, foreign supply is not expanded to the point where it reaches higher cost comparable to domestic production cost.[3] Because the foreign cost remains low, there exists a "windfall rent" for some party along the production to consumer chain—a rent equal to the difference between domestic production cost and foreign production cost. Some of this rent may reach the consumer, providing him with a lower price on imports than on domestic goods. Some of the rent may accrue to the foreign supplier or to the importing intermediary. (Of course, the fact that imports under quotas may be cheaper than domestic goods does not imply that quotas benefit the consumer. On the contrary, the presence of quotas enables domestic producers to hold prices higher than they otherwise could, causing a loss to consumers. Although imports at prices below domestic prices may provide partial relief to consumers from the loss imposed by quotas through higher domestic prices, the restricted quantities permitted under quotas will keep this relief limited.)

The case of quotas is relevant for American imports of apparel, footwear, and television sets. The United States has quotas on textile imports, quotas on footwear from the two crucial low cost suppliers (Korea and Taiwan, which accounted for almost two-thirds of import volume in 1977), and quotas on television imports from Japan.

Whether those products under qoutas will in fact be cheaper than domestic production is an ambiguous question. The point is that they *may* be cheaper. It is true that when facing quotas, foreign suppliers may decide to raise their prices, absorbing all of the potential rent themselves. But if they do not wish to run the risk of losing market share to similar suppliers in other countries (especially Japan, where apparel quotas are not fully used, or Europe, where they do not exist), then the suppliers may absorb relatively little of the windfall

---

[3] That is, foreign output does not move as far out along the upward sloping supply curve (toward higher cost production) as it would if foreigners could sell larger quantities (in the absence of quotas).

gain. For their part, the importing merchandisers might absorb the windfall gain if their market structures were non-competitive. But with numerous merchandising firms competing among themselves, these windfall gains will tend to be small. That leaves the consumers. Under these circumstances, there can be a windfall gain to consumers in the form of a lower price. A lower price for imports than for domestic goods, despite comparable quality, does imply some form of disequilibrium; the market is not "clearing," with all potential customers receiving all the low-priced imports they want. Instead, some form of rationing is implied, such as queuing up for imports that are "on order" but not as readily available as the more expensive domestic product.

In summary, economic theory suggests three points of fundamental relevance to this study. (1) The availability of imports makes prices lower than they otherwise would be, even if the imported product sells at exactly the same price as the domestic product. (2) Product differentiation explains why the import price may be either higher or lower than the price of a domestic good with characteristics that are identical on objective criteria. Therefore lower price for imports does not necessarily mean lower quality of the imported product. (3) The presence of quotas (as in the case of apparel, footwear, and television sets) gives rise to a windfall rent that may reach the consumer, making the price of the import cheaper than that of the domestic good.

3. *The Sample Survey*

Appendix B provides a complete account of the sample survey. The discussion here summarizes its most important features.

To begin with, the sample was large. Approximately 4,300 price observations were collected on 168 specifically identified products. Too o... in congressional testimony on import prices one side has produced an assortment of cheap imported sweaters (for example) while the other side has produced its own small collection of import items just as expensive as domestic equivalents. This level of discourse is inadequate to the formulation of public policy. Instead, this study employs a large and scientifically designed sample survey that can provide the basis for a rigorous answer to the question of whether the American consumer receives a direct savings on imported products.

The sample draws from geographically diverse areas, in order to be representative of U.S. consumption. The sample was evenly divided between Los Angeles, Chicago, Philadelphia, and Atlanta.

The products sampled were chosen for their representativeness of consumption and imports. A total of 168 products entered the sample.[8] Of these, 52 products were in apparel, 41 in footwear, and the remainder in hardgoods. Therefore the product coverage encompasses the full range of consumer items found in retail stores. The only main consumer products excluded are automobiles, food products, pharamaceuticals.

Each product was defined in relatively specific terms, as may be seen from table B-1 in Appendix B. The instructions to enumerators were to make the utmost effort at collecting prices only for comparable quality items for the product in question. (Appendix B reports the instructions to enumerators). Because of the detailed specifications assigned to each product, and in view of the instructions to enumerators, it is reasonable to expect that the price observations for imports and domestic products refer to products of comparable quality. Any remaining divergences in quality among observations should be random, and with the large sample taken, that randomness should pose no problem (because there will be enough observations that those erring in one direction will be offset by those erring in the other).

The sample was designed to obtain equal numbers of observations for imports and for domestic products, in order to provide the basis for analysis of the difference between the prices of the two. In particular, for each of the 168 specific products, an attempt was made to obtain, in each of the four cities, 6 observations on domestic goods and 6 observations on imported goods.

The sample design also took into account the type of retail outlet. In each city for each product, an attempt was made to obtain at least one domestic and one import observation from each of the four store types: chain, department, discount, and specialty. In addition, the survey data recorded whether the product was on sale or not. Although the basic analysis below uses the actual transactions

---

[8] Because there were too few observations available for some of these products, the surveyors also took observations on "substitute" products. In those cases where the substitutes were very close to the original product, the analysis merges their observations with those for the original product. Otherwise the substitute products are omitted from the analysis (see notes to Table B-1).

price (that is, the sale price if the product were on sale), in the cases of sale items the original price was recorded as well, for the analysis of markdowns.

Finally, the period of the survey, August 1978, was selected after discussion with retail merchandising experts, as a "typical" period for the survey. In particular, the survey was trimmed to avoid the end of season clearance sales that are common in July. Moreover, summer items were avoided in favor of fall items, in order to avoid leftover stock likely to be on sale.

Appendix B of this study, prepared by the Survey Research Laboratory of the University of Illinois, reports further details of the sample.

4. *Empirical Results*

The results of the price survey are summarized in Tables 1–4 of the text and Tables A–1, A–3 and A–4 of Appendix A. The central focus of the empirical analysis is upon the question: Are imports cheaper than comparable domestic products? All of the analyses distinguish between two subgroups of imports: those from Europe, Canada, and Japan (Region A); and those from Latin America and Asia excluding Japan (Region B).[4] This distinction is essential because imports from Europe and Japan are likely to be more expensive than those from the developing countries, given the movement of exchange rates in recent years and given probable influences of taste and fashion.

4.1. *Frequency of Cheaper Imports*

Table A–1 of Appendix A reports for each of the 168 products sampled the average domestic price, average price for imports for Region A, and average price for imports from Region B. The table also shows the corresponding price ratios of imports relative to domestic products, the number of observations for each case, and "t statistics" for a statistical test for difference of means between import price and domestic price (with a separate test for each region).

TABLE 1.—PERCENTAGE OF SAMPLED PRODUCTS WITH IMPORTS CHEAPER THAN DOMESTIC GOODS

Product group	Imports from Europe, Japan, Canada (region A)		Imports from Latin America, Asia (region B)	
	Number of subproducts with comparison	Percentage of subproducts with imports cheaper	Number of subproducts with comparison	Percentage of subproducts with imports cheaper
I. Apparel:				
Women's	10	70	14	71
Men's	11	36	18	83
Girls'	6	67	10	50
Boys'	3	67	9	78
Subtotal	30	57	51	73
II. Footwear:				
Women's	9	0	9	78
Men's	12	17	11	91
Girls'	5	0	8	88
Boys'	6	0	4	100
Subtotal	32	6	32	88
III. Hardgoods:				
Watches	4	0	4	75
Tools	3	100	1	100
Recreational	10	40	10	90
Small appliances	7	29	5	80
Typewriters, calculators	3	100	2	100
Housewares	11	36	13	85
Radio, TV, stero	4	100	4	100
Photographic	3	33	2	50
Furniture	3	100	3	33
Floor, wall coverings	2	100	2	50
Miscellaneous	14	21	12	67
Subtotal	64	45	58	78
All products	126	38	131	78

Source: App. A, table A-1.

[4] Region A also includes imports from all other areas excluding Latin America and Asia. It thus includes communist countries and Africa; but in practice imports from Region A are primarily from Europe, Japan and Canada.

In order to assess the extensive results of Table A–1, text Table 1 presents a summary of these results. Table 1 reports the results by 10 product groupings. Within each grouping, the table shows the number of individual sample products for which comparisons between domestic price and import price were available. It then shows the percentage of those individual products for which imports from the region in question were found to be cheaper than domestic goods. For example, the first two entries in the table indicate that there were 10 products in womens' apparel with price comparisons between imports from Region A and domestic goods. Of these 10 products, 70 percent (or 7 products) showed imports being cheaper than domestic supply.

The first major pattern shown in table 1 is that imports from Region B are systematically cheaper than domestic goods. This finding holds almost without exception; it is almost equally true of the three broad groups—apparel, footwear, and hardgoods; and it generally shows up strongly, with on the order of 80 percent of the sample products showing imports from Region B as cheaper than domestic goods.

The second pattern shown in Table 1 is that, unlike imports from Region B, those from Region A are not generally cheaper than domestic products. The majority of products show Region A imports as cheaper for apparel. For footwear, however, a large majority of products show imports from Region A as not cheaper than domestic supply. For hardgoods, the simple majority of products shows imports from Region A as not being cheaper than domestic products, although here the simple average is misleading. Region A imports are cheaper in some crucial goods such as radio, television, and stereo, so that a weighted average finds imports from the region to be cheaper than domestic supply (as discussed below).

Taking the simple sum for all products, imports from Region B are cheaper than domestic supply in 78 percent of the product cases, but from Region A imports are cheaper in only 38 percent of the cases. Again, however, it is necessary to weight the products by their relative importance in trade, as is done below.

4.2. *Results by Store Type*

A question that immediately arises is whether these results are reliable even when the type of merchandise outlet is taken into account. For example, if most of the observations on imports from Region B come from discount stores while most of the domestic observations come from expensive department or specialty stores, the data might represent only different levels of retail services and costs rather than any true distinction between the prices of imports and domestic goods. For this reason the same calculations as shown in Appendix Table A–1 have been conducted for four separate groupings of data: observations from chain stores, department, discount, and specialty stores, respectively. Using these separate calculations it is possible to examine whether imports tend to be cheaper than domestic supply even when "holding constant" the influence of store type.

TABLE 2.—PERCENTAGE OF SAMPLED PRODUCTS WITH IMPORTS CHEAPER THAN DOMESTIC GOODS: BY TYPE OF STORE

Type of Store	Imports from Europe, Japan, Canada (region A)		Imports from Latin America, Asia (region B)	
	Number of subproducts with comparison	Percentage of subproducts with imports cheaper	Number of subproducts with comparison	Percentage of subproducts with imports cheaper
I. Chain:				
Apparel	9	44	46	70
Footwear	18	33	18	78
Hardgoods	36	69	24	71
All products	63	56	88	72
II. Department:				
Apparel	16	62	44	73
Footwear	25	32	19	74
Hardgoods	34	35	24	79
All products	75	40	87	75
III. Discount:				
Apparel	7	71	39	64
Footwear	11	45	21	38
Hardgoods	35	45	29	72
All products	53	55	89	61
IV. Specialty:				
Apparel	15	33	42	69
Footwear	26	15	26	71
Hardgoods	57	53	28	86
All products	98	40	96	77

Source: Project calculations.

Table 2 presents a summary of the results by store type. It is clear from the table that the strong pattern of cheaper imports from Region B in Table 1 persists even when distinguishing among store types. The percentage of products for which imports from B are cheaper than domestic supply remains high, on the order of 70 percent.

The results of Table 2 for imports from Region A are similar to those of Table 1 with respect to relative positions of different product groups. Thus, imported apparel and hardgoods tend to be cheaper or comparable in price to domestic supply, while footwear imports from Region A tend to be more expensive than domestic, just as in Table 1. However, the addition of detail by store type makes a sizable difference in the degree of these price differences. In general, when store type is neutralized (Table 2), imports from Region A are found to be cheaper than domestic supply much more frequently than when store type is not distinguished. For example, within each store type, footwear imports from Region A are cheaper than domestic in about one-third of the case. But if all store types are considered together, footwear from Region A is cheaper than domestic in only 6 percent of the cases. Thus, for footwear much of the apparent greater cost of imports from Region A really reflects a concentration of these imports in the higher cost stores—department and specialty stores.

Despite these distinctions, Tables 1 and 2 broadly point to the same conclusions: imports from Region B (developing countries) are almost always cheaper than domestic supply; imports from Region A are also generally cheaper for apparel, but they are comparable in price for hardgoods and they tend to be more expensive than domestic supply for footwear.

4.3 *Significance Tests*

Before turning to analysis incorporating weights by product, further results reported in Table A-1 of the appendix warrant attention. The table reports t-statistics for tests on significant difference of means. That is, for each product there are several domestic observations and several import observations. The simple test for difference of means enables one to say whether prices of domestic and import supply differ in a statistically significant way.[5] In many cases there are frequently too few observations on a single product to permit a clear significance in the difference of means. For those products in which the mean prices do differ significantly, however, the results are as follows. For Region B, there are 40 products (out of the total of 168) in which imports are significantly cheaper than domestic supply, but only 8 products for which domestic supply is significantly cheaper (at the 10 percent statistical level). Thus, the significance tests strongly support the general pattern of the results for Region B: imports are systematically cheaper than domestic supply.

For Region A, the cases of statistically significant difference in price tend to show imports as more expensive than domestic supply. There are 31 products for which imports from Region A are significantly more expensive than domestic supply, and only 14 products for which Region A imports are significantly cheaper than domestic goods.

TABLE 3.—PERCENTAGE DIFFERENCE OF IMPORT PRICE FROM DOMESTIC PRICE[1]

Product group	Imports from Europe, Japan, Canada (region A)	Imports from Latin America, Asia (region B)	All imports
I. Apparel	+4.3	−11.6	−8.7
II. Footwear	+19.9	−23.5	−11.5
III. Hardgoods:			
Watches, clocks	+74.4	−13.8	+31.2
Tools	−30.4	−25.8	−29.9
Recreational goods	+12.5	−34.1	−4.9
Small appliances	+8.7	−9.1	+7.8
Typewriters, calculators	−27.6	−27.2	−27.6
Housewares	−15.6	−29.9	−19.4
Radio, TV, stereo	−30.0	−30.2	−30.0
Photographic equipment	+8.9	−26.4	+6.0
Furniture	−10.4	+1.8	−8.5
Floor, wall coverings	−14.1	NA	−14.1
Miscellaneous	+1.0	−19.9	−7.8
Subtotal, hardgoods	−5.4	−23.7	−11.8
All products	−.4	−16.3	−10.8

[1] Within regions, weighting is proportional to the value of imports by product group (table A-2, app. A). Weights between regions for individual product groups are proportional to quantity of imports, determined from relative import values as adjusted by relative price from each region. For footwear, weights between regions are based directly on 1977 data for number of pairs imported (International Trade Commission data).

Source: Tables A-1 and A-2, app. A.

4.4 *Weighted Aggregate Results*

Table 3 presents the central empirical results of this study. In this table, the relative importance of each product group is taken into account. The table is therefore more meaningful for general conclusions than Tables 1 and 2, which refer to simple frequencies for the sample products, which include as "products" items as significant as a color television set (number 142) and as modest as a cork screw (number 131).

The calculations underlying Table 3 follow these steps. First, within Regions A and B separately, the weighted average ratio of import price to domestic price is calculated for the product group in question. For the various hardgoods categories, each individual sample product is weighted in proportion to the value of imports in 1975 (Appendix A, Table A-2, for the specific region. Thus, a single figure is obtained for the percentage difference of import price from domestic price for each of the 11 sub-categories of hardgoods, for Region A and Region B separately. For apparel and footwear, the import data are of aggregation that make the use of the entire categories preferable to any attempt to distinguish sub-categories. (In particular, the trade data do not divide by the categories "men's, women's, boys', and girls'.) Because of the large number of products in each of these broad categories (52 for apparel, 41 for footwear), and because of the frequent occurrence of products with an extremely small number of observa-

[5] The tests apply to assumption of equal variance for the two groups being compared. The text discussion applies a general critical level of 1.65 for the t-statistic, the critical value for significance at the 10 percent level for large numbers of observations. See Paul G. Hoel, "*Introduction to Mathematical Statistics*" (New York: John Wiley & Sons, 1962), p. 277.

tions from the region in question, it was necessary to weight each product by the number of import observations for apparel and footwear.[6]

The first two columns of Table 3 report the results of these calculations for Regions A and B separately. As shown in the table, imports from Region B are systematically cheaper than domestic supply. These imports from developing countries are cheaper by approximately 12 percent for apparel, 24 percent for footwear, and 24 percent for hardgoods. (The weighted average figure for all hardgoods uses the import value for each sub-category as the basis for weighting.) Imports for Region A are slightly more expensive than domestic supply in apparel (4 percent) and in footwear (20 percent). These results suggest the influence of fashion and brand attraction in these softgoods. In hardgoods, by contrast, even the imports from Region A are cheaper than domestic supply. Here, certain subsectors are especially important to the overall result. In the category for radios, televisions, and stereos, in particular imports from Region A are 30 percent cheaper than domestic supply, and this category accounts for 25 percent of the value of hardgoods imports from Region A (Table A–2, Appendix A). The only hardgoods categories where there appears to be a premium for taste or fashion for imports from Region A are watches and clocks, and photographic equipment.

At the aggregate level, imports from Region A are almost identical in price to domestic products. The savings on imported hardgoods are offset by premiums on imports of apparel and shoes from these industrial countries. From Region B, by contrast, aggregate imports are much cheaper than domestic supply, costing 16 percent less (average based on import value weights).

In order to arrive at a final evaluation of the relative price of imports, it is necessary to aggregate imports from both Regions A and B. The procedure followed in Table 3 does so while retaining the valuable information about the different relative prices for the two regions. The final column of the table is a weighted average difference of import price from domestic price. The weights as between Regions A and B for each product group are quantity weights.[7] For

[6] An additional detail of the calculations is that they are not merely the weighted average of the ratio of import to domestic price. That average would be biased upwards; a single ratio could swamp all others, because the upper limit of the ratio is infinity while the lower limit is zero even though the true mean for random variation would be unity. To take this assymetry into account, all cases with the ratio of import price to domestic price greater than unity were first inverted, then averaged (weighting); then the inverse was taken of this weighted inverse. Then that weighted average was combined with the weighted average of all ratios below unity to obtain the overall price ratio. Thus:

$$R=\sum_i w_i\frac{P_{mi}}{P_{di}}+1\Big/\sum_j w_j\frac{P_{dj}}{P_{mj}}$$

where R is the weighted average ratio of import to domestic price, w is the product weight, P_m and P_d are import and domestic price respectively, and subscript i and j refer to all cases with product price ratio P_m/P_d below and above unity, respectively.

[7] Within each product group it is appropriate to use quantity weights, not value weights, to obtain the overall ratio of price for imports relative to domestic supply for the product group. Proof; within a given product group it is desired to find $\bar{P}_m/P_d$ where $\bar{P}_m$ is average import price (region A and B combined) and P_d is domestic price. But $\bar{P}_m=V_m/Q_m$ where V_m is total value of imports and Q_m is total quantity But $V_m=V_A+V_B$ and $Q_m=Q_A+Q_B$ where subscripts A and B denote region of origin. We are given the individual price ratios P_A/P_d and P_B/P_d from the separate regional analysis (where P_A, P_B are import prices from Regions A and B, respectively). The proposition to be demonstrated is that

$$\frac{P_A}{P_d}\cdot\frac{Q_A}{Q_m}+\frac{P_B}{P_d}\cdot\frac{Q_B}{Q_m}=\frac{\bar{P}_m}{P_d};$$

that is, that quantity weights should be used. If this last question may be shown to be valid, the proposition is demonstrated. It may be rewritten as;

$$\frac{V_A}{P_dQ_m}+\frac{V_B}{P_dQ_m}\overset{?}{=}\frac{\bar{P}_m}{P_d}$$

or, therefore, as

$$\frac{V_A+V_B}{B_dQ_m}\overset{?}{=}\frac{\bar{P}_m}{P_d}$$

and further, as

$$\frac{1}{P_d}\frac{V_m}{Q_m}\overset{?}{=}\frac{\bar{P}_m}{P_d},$$

and the proposition is demonstrated.

footwear, these quantity weights are available directly from 1977 data on the number of pairs imported from each region.[8] For the other product categories, the content is too heterogeneous to make weighting for observed "units' 'meaningful. Therefore the quantity weights are derived indirectly. The import values (Table A-2) are used as the basis for the weights, but only after "deflating" the import value for Region A by the relative price of Region A goods compared to Region B goods as implied by the first two columns of Table 3. These "deflated" values then provide the basis for quantity weights to obtain the weighted average import price relative to domestic price (final column, Table 3).[9]

The aggregate results shown in the final column of Table 3 show that overall imports are indeed cheaper than domestic supply. Imports are cheaper in each of the three broad categories: apparel, footwear, and hardgoods. Imports are also cheaper in eight of the eleven subcategories of hardgoods. Moreover, imports are cheaper than domestic supply by a considerable degree: approximately nine percent for apparel, 12 percent for footwear, and 12 percent for hardgoods. A final aggregate price comparison is obtained by weighting each of the three broad product categories in proportion to total imports (Table A-2). This final aggregate estimate finds that overall imports are 10.8 percent cheaper than domestic products.

The crucial role of supply from developing countries in this aggregate result deserves highlighting. The aggregate result for Region A alone shows imports almost identical in price to domestic products. It is the large saving on import from developing countries (Region B) that drives the final result whereby aggregate imports are approximately 11 percent cheaper than domestic supply.

Table 3 also may shed light on the role of protective quotas as opposed to such influences as taste and brand identification. In the sectors of apparel and footwear, U.S. imports from Region B are subject to severe quota controls. In both of these sectors, Region A supply is considerably more expensive than supply from Region B (by 18 percent and 57 percent, respectively). In the sector of radios, television sets, and stereo, by contrast, the principal U.S. quota restriction is against imports of color television sets from Japan, in Region A. And in this sector, supply from Region A is just as cheap as supply from Region B—both being 30 percent cheaper than domestic supply. These patterns suggest that the presence of quotas facilitates the charging of higher prices by the suppliers not subject to the quotas. In clothing and footwear, the restraint on lower cost supply from developing countries appears to facilitate the charging of high prices by European and Japanese suppliers. In the case of television sets, limits on low cost imports facilitate the charging of high prices from the main alternative supplier—domestic U.S. production—leading to a wide price difference between domestic and imported supply. These patterns imply that loosening up these quotas would provide savings to the American consumer by permitting a larger shift from more expensive domestic supply to cheaper imports (in the case of television sets) and from expensive domestic, European, and Japanese supply to cheaper supply from developing countries, in the case of apparel and footwear.

4.5. *Savings to the Consumer*

The results presented in Table 3 may be used to estimate the total annual savings to the American consumer made possible by the availability of imports. These savings arise because, unit for unit and holding quality constant insofar as possible, imports are found to be cheaper than domestic production. The present flow of imports therefore provides a direct savings to the consumer; if the consumer had to shift entirely to domestic supply he would lose on each unit

---

[8] According to I.T.C. data, 72.3 percent of the quantity of non-rubber footwear came from Region B in 1977, and 27.7 percent from Region A. International Trade Commission, "Non-Rubber Footwear; U.S. Production, Imports for Consumption, Apparent U.S. Consumption, Employment, Wholesale Price Index, and Consumer Price Index; Fourth Calendar Quarter 1977" (Washington, D.C.; I.T.C., 1978).

[9] The specific procedure used is the following.

Let

$$\lambda = \frac{P_A}{P_d} \Big/ \frac{P_B}{P_d}$$

for each category (Table 3). Then $\bar{P}_m / P_d$ is calculated as;

$$\frac{\bar{P}_m}{P_d} = \frac{P_A}{P_d} \frac{V_A/\lambda}{(V_A/\lambda)+V_B} + \frac{P_B}{P_d} \frac{V_B}{(V_A/\lambda)+V_B}$$

shifted because of the higher price for domestic supply. And of course if imports were abolished there would be an enormous additional indirect cost to consumers, because domestic prices would not stay fixed (or even continue inflating at their previous rate) but would rise to close the gap caused by the decrease in total supply as imports ceased. The estimate here concentrates solely on the direct consumer savings from imports, not the additional indirect savings represented by the fact that domestic prices would be even higher in the absence of imports.

In order to estimate the direct savings to American consumers made possible by imports, it is first necessary to consider the amount they spend currently on imported goods. In the first half of 1978, total retail sales by general merchandise, apparel and furniture firms amounted to $83.3 billion,[10] so that total retail sales for 1978 may be estimated as approximately $167 billion. This figure corresponds approximately to the total sales of stores in the universe of retail firms handling merchandise of the type examined in this study: essentially, manufactured consumer goods excluding automobiles and food. Applying the estimate for the share of imports in total retail sales, eleven percent (as discussed above), total retail sales of imported merchandise amount to an estimated $18.4 billion for 1978.

The calculations of Table 3 showed that imports cost the consumer 10.8 percent less than dometic supply. Therefore if consumers had to rely on domestic supply alone, they would have to pay 12 percent higher prices[11] for each unit previously imported (the direct effect, excluding indirect effects of an induced rise in the price of domestic goods). Applying this 12 percent figure to the base of $18.3 billion spent on consumer imports in 1978, the resulting estimate is that American consumers save $2.2 billion annually by obtaining imported goods at prices below those of domestic goods.

4.6. *The Low Income Consumer*

Imports may play a special role in providing consumer savings to low income families. Although data are not available for the fraction of consumer imports purchased by the poor, it is reasonable to expect that families pressed by extremely limited budgets seek out the savings available through imports. Moreover, as between the imports from costlier Region A and cheaper Region B, it is likely that low income families focus their purchases on goods from Region B. One piece of indirect evidence on this possibility comes from data on imports of footwear. A recent sample survey of footwear merchandisers reported that Korea and Taiwan generally supplied a high proportion of low-valued shoes in 1976 and 1977. These two suppliers accounted for virtually the entire import sales for women's plastic dress and casual shoes of under $5.00 and for men's plastic work shoes of under $12.00. For leather footwear, Korea and Taiwan supplied 76 percent of imported work shoes and 93 percent of imported athletic shoes, and both categories may be assumed to be purchased chiefly by low income groups. By contrast, industrial countries supplied the bulk of imported leather dress and casual shoes, which were probably purchased by higher income families than were leather work, athletic, and plastic shoes.[12] These fragments of evidence support the idea that imports purchased by the poor come mainly from the Region B area (developing countries).

In order to determine the likely savings to low income Americans through imports, it is necessary to apply weights that represent their consumption. Table A-5 of Appendix A presents some approximate estimates of relative weights of the categories included in this survey, based on consumer expenditure data for families with incomes below $8,000 in 1972–73 (approximately 40 percent of all households). Although the correspondences in categories between the present study and the consumer expenditure study are incomplete, the weights computed in Table A-5 are sufficient to obtain an idea of the specific percentage savings from imports, for low income Americans as a group. When these consumption weights are applied to relative prices of overall imports (from both Regions A and B), the result is that imports are 10.7 percent cheaper than domestic goods. However, if one accepts the idea that most imports purchased by low income groups come from lower-cost Region B, then (applying the weights of Table A-5

[10] U.S. Department of Commerce, *Current Business Reports: Monthly Retail Sales and Accounts Receivable*, BR-78-06, June 1978, p. 4.

[11] That is, $1.00/(1.00-0.108)=1.12$.

[12] Brimmer & Company, Inc., *Retail Sales of Non-rubber Footwear 1976–1977 Reported in th Survey of Retailers' Nonrubber Footwear Transactions* (Washington, D.C.: July 19, 1978, mimeographed).

to the second column of table 3) low income consumers save as much as 13.1 percent on the purchase of imports as opposed to domestic goods.

4.7. Discount Sales

The survey results shed some light on practices of discount sales as related to imports. Although the sample period of August, 1978 was specifically chosen in order to avoid a period of major sales (and the items where relevant, were general fall styles so that summer clearances were avoided), the sample results did record the sale price and the original price for those products found to be on sale.

To the extent that a larger fraction of imports tended to be sold at discount than is true for domestic goods, there would be an additional source of consumer savings from imports. To the extent that, when they are on sale, imports are marked down by a larger percentage than domestic goods on sale, there would be still another source of savings for consumers through the purchase of imports. Indeed, the Library of Congress study on retail markups cites testimony by the International Trade Commission suggesting that when imported footwear is on sale the consumer receives a larger percentage discount than on domestic goods on sale.[18]

Table 4 presents the information contained in the sample survey with respect to discount sale practices. As shown in the table, only a very small fraction of the sampe observations were on sale at the time of the survey, averaging on the order of 5 percent of the sample. Moreover, the sale markdowns were not especially large, with markdowns from original price by one-quarter to one-third.

The table shows that markdowns on apparel and footwear tended to be larger than markdowns on hardgoods. The largest markdowns were on footwear. The table does suggest that (a) imports are more frequently on sale than domestic goods, and (b) markdowns for imports are larger than markdowns for domestic goods—although neither pattern is pronounced. Both patterns distinguishing imports from domestic goods show up most clearly in the case of footwear. In this sector the percentage of imported goods on sale was more than twice the percentage of domestic goods on sale. Moreover, the sale price as a fraction of original price was slightly lower for imports than for domestic footwear. For hardgoods, similarly, the sale price of imports was a modestly lower fraction of original price than the corresponding fraction for domestic goods.

TABLE 4.—PATTERNS OF DISCOUNTING IN RETAIL SALES: IMPORTS AND DOMESTIC GOODS (AUGUST 1978)

Product group	Domestic		Imports	
	Percentage of total observations on sale	Sales price as percentage or original price[1]	Percentage of total observations on sale	Sales price as percentage or original price
Apparel	4.4	67.9	4.6	67.9
Shoes	2.3	65.5	5.3	63.7
Hardgoods	6.4	75.7	5.0	73.6

[1] Unweighted averages of percentages for individual items on sale.
Source: Project calculations.

Table 4 does not begin to tell the whole story with respect to the impact of discount sales on the relative price of imports. As the season nears its end, the incidence of discount sales becomes much greater for softgoods, and the fraction of items on sale would be much higher than the level of 5 percent found in August. As the season moves into periods of volume discounting, it is possible that the modest differences between imports and domestic goods apparent in Table 4 become much more significant, and that imports become still cheaper in relative terms because of greater volumes and percentages of discounting than for domestic goods. However, the results of survey itself can speak only to the modest differences already apparent in the non-sale period of August, 1978.

4.8. Regression Analysis

The final set of statistical analyses carried out with the survey data involve the estimation of "regression models" that "explain" the price of a particular

[18] "Library of Congress Study . . . ," p. 5.

observation by a number of "variables." Specifically, each of the characteristics of the observation enters as a "dummy variable" taking on the value of unity when applicable and zero otherwise. For a particular product group, the average price is then "explained" by a statistical regression which relates the price of each observation to its distinguishing characteristics, as measured by a dummy variable for each of the following: city of the sample, product in question, import from Region A or B versus domestic supply, type of store, location of store (center city versus suburb), and budget area versus regular area. The principal concern of this study is with the coefficients on the dummy variables for imports. If the import variable is negative, then the result indicates that the import is cheaper than domestic supply even when taking into account all of the other factors such as store type, city, and so forth.

The specific regression models applied use the logarithm of price as the dependent variable and the series of dummy variables as independent variables.[14] The results of the regression tests appear in Tables A–3 and A–4 of Appendix A. Broadly speaking, these results confirm the results already discussed. The regression analyses systematically tend to show imports from Region B to be cheaper than domestic products (i.e. the regression coefficients on the dummy variable for Region B are usually negative). They show imports from Region A to be cheaper than domestic products in some cases (apparel, tools, televisions, furniture, floor coverings) and more expensive than domestic products in others (footwear, watches, clocks, recreational, small appliances, typewriters, housewares, photographic equipment, miscellaneous) (Table A–3). The result for apparel is interesting in that it finds imports from Region A to be cheaper than domestic products, with a strong statistical significance (high t-statistic). By contrast, apparel imports from Region A are found to be more expensive in the direct analysis of price ratios (Table 3 above). This result suggests that once store type, budget areas, location, and so forth are held constant, even Region A supplies of apparel are cheaper than domestic supply. Generally, however, the regression results echo those already calculated (in Table 3 especially) on the basis of the simpler analysis of import price relative to domestic price. (The regression results for footwear, for example, strongly confirms that imports from Region A are more expensive, and from Region B less expensive, than domestic supply. Similarly, strong statistical results for the regressions support the conclusion on Table 3 that all imports are cheaper than domestic supply in the categories of tools and of radio-TV-stereo.)

Finally, the regression analyses throw light on tangential aspects of merchandise trade. Table A–4 reports the coefficients for dummy variables other than those indicating imports. These results indicate that: (a) department stores are about 48 percent more expensive than chain stores (the base), while discount stores are on the order of 40 percent cheaper than chain stores and specialty stores are 22 percent more expensive; (b) goods sold in apparel budget areas are 32 percent cheaper than other goods; (c) the center city is 8 percent cheaper than the suburban shopping center for apparel, but 25 percent more expensive for hardgoods.

---

[14] For hard goods, the model estimated for each sub-category was:

$$\begin{aligned} \ln p = a &+ b_1 CHI + b_2 LA + b_3 PHL \\ &+ c_1 DPT + c_2 DIS + c_3 SPL \\ &+ d_1 CEN \\ &+ e_1 IMPA + e_2 IMPB \\ &+ F_1 X_1 + F_2 X_2 + F_n X_n \end{aligned}$$

where CHI, LA, PHL, DPT, DIS, SPL, CEN, IMPA, IMPB, and Xi take on values of unity if the observation is from (respectively) Chicago, Los Angeles, Philadelphia, department store, discount store, specialty store, center city, import Region A, import Region B, and sub-product group "i"; and these variables take on the value of zero otherwise. For apparel and (separately) for footwear, a series of price range dummy variables based on the average price for the sub-product replaced the series of product dummy variables.

In this formulation, the antilog (natural base) of the coefficient on a particular dummy variable tells of the fraction which the variable causes the price to be multiplied by, all else held constant. For example, the model states that $P = e^a + b\ CHI \ldots + e_2 IMPB + \ldots$

Suppose the result is that coefficient $e_2 = -0.2$. Then a product imported from Region B is the fraction $e^{-0.2} = 0.82$ times as expensive as the domestic product which serves as the base for the estimate, or 18 percent cheaper than the domestic product.

4.9. *Summary of Survey Results*

The sample survey results strongly indicate that imports are cheaper than comparable domestic products. In the aggregate, when weighting results by the significance of each product category in total consumer imports, the *prices of imports are found to be 10.8 percent cheaper* than prices of comparable domestic goods. Imports from Latin America and Asia excluding Japan are even cheaper. *When considering the products weighted according to consumption by low income households, imports from developing areas are 13 percent cheaper than domestic products.* Overall, the American consuming public saves more than $2 billion yearly as the direct results of purchasing imports that are cheaper than domestic goods.

5. *Conclusion*

This study uses sample survey data for a total of 4,300 observations on domestic and import prices, collected by the Survey Research Laboratory of the University of Illinois, to examine whether or not imports are cheaper than comparable domestic goods. Detailed product specification and instructions to the surveyors provide assurance that the price comparisons are for domestic and imported goods of comparable quality.

The chief finding of this study is that imports are indeed cheaper than comparable domestic goods. Overall, imports are 10.8 percent cheaper than domestic products.

Within imports, products coming from Latin America and Asia excluding Japan (Region B) are considerably cheaper than products imported from Europe, Japan, and Canada (Region A), as was expected. Across all products, imports from the developing Region B are some 16 percent cheaper than domestic goods, whereas imports from industrial Region A are almost identical in price to domestic goods. The contrast is especially striking for footwear, where imports from Region B are 23.5 percent cheaper than domestic supply but imports from Region A are actually 19.9 percent more expensive than domestic footwear.

The fact that imports are cheaper than domestic products means that American consumers save more than $2 billion annually as the direct result of cheaper import prices (not including their indirect savings made possible by the fact that domestic prices themselves would be driven up if import supply were curtailed). Moreover, these savings are probably especially important to low income families. Assuming that the poor focus their import purchases upon the cheapest supply, that from developing Region B, import prices are an estimated 13 percent cheaper than domestic prices for low income families (using budget weights applicable to families in the lowest 40 percent of the U.S. income distribution).

The general policy implication of these findings is that the presence of imports has a vital role to play in providing savings to the consumer and in restraining inflation, the nation's number one economic problem. Therefore, any proposed measures to reduce or limit imports should be viewed with the utmost caution. Even in those special cases where import injury appears to warrant some action, the appropriate remedy will probably be the use of adjustment assistance, a measure that, if administered properly, can attend to the needs of specific dislocated workers without jeopardizing the benefits provided by imports to consumers.

Another, more specific policy implication is contained in these results. The price data for apparel, footwear, and television sets strongly suggest that the consumer pays an especially high price for the systems of voluntary quotas in these sectors. Imported apparel and footwear from developing Region B are much cheaper than domestic (and Region A) supply, yet the regimes of quotas seriously impede the extent to which American consumers can take advantage of these low cost supplies. Similarly, import prices for television sets are cheaper than domestic prices, yet voluntary quotas against Japan limit the extent to which the consumer can benefit. The price data for these three specific sectors graphically illustrate how the consumer and the fight against inflation suffer when the nation adopts import quotas as the means to relieve a domestic sector considered to be injured by imports. These specific results again point to the need to make the transition to adjustment assistance so that the injury of the specific sector may be addressed without inflicting broader injury upon the American consumer and the economy as a whole.

APPENDIX A.—STATISTICAL TABLES

TABLE A-1

PROD	P_d	P_A	P_B	P_A/P_d	P_B/P_d	# d	# A	# B	t_A	t_B
1	80.12	84.00	54.49	1.048	0.680	8	1	14	−0.14	3.29
2	14.10	9.95	12.36	.706	.877	20	1	8	.37	.35
3	13.64	NA	18.00	NA	1.320	19	0	13	0	−1.43
4	12.05	NA	11.04	NA	.916	15	0	19	0	.45
5	13.81	NA	12.10	NA	.877	16	0	18	0	.85
6	17.32	11.99	15.79	.692	.911	15	1	15	.75	.56
7	20.64	12.75	27.55	.618	1.335	20	9	9	3.01	−1.42
8	6.84	5.58	4.44	.815	.649	11	6	1	1.20	1.04
9	45.80	27.96	34.86	.610	.761	10	1	15	1.43	2.15
10	18.16	13.19	14.37	.726	.791	16	5	8	1.50	1.37
11	5.25	6.82	4.31	1.300	.822	17	8	6	−1.51	.82
12	19.41	19.36	25.52	.998	1.315	21	11	5	.02	−1.95
13	20.08	NA	20.65	NA	1.029	12	0	15	0	−.16
14	2.76	3.73	NA	1.350	NA	9	16	0	−1.18	0
15	13.00	NA	6.60	NA	.423	2	0	4	0	7.73
16	49.75	NA	39.16	NA	.787	6	0	12	0	1.13
17	75.68	93.17	51.25	1.231	.677	16	3	4	−1.32	1.97
18	13.88	NA	12.37	NA	.891	10	0	8	0	.61
19	13.55	12.00	10.01	.986	.739	14	1	16	.28	2.00
20	12.17	NA	10.67	NA	.876	21	0	23	0	.86
21	9.92	NA	6.90	NA	.696	20	0	18	0	2.98
22	17.79	NA	10.18	NA	.672	17	0	8	0	2.87
23	18.59	21.50	14.99	1.156	.806	21	1	8	−.47	1.49
24	18.78	28.00	15.62	1.491	.832	21	1	19	−1.84	1.96
25	13.09	20.00	14.49	1.528	1.107	20	1	12	−2.02	−.68
26	16.99	18.50	17.27	1.089	1.016	14	2	13	−.62	−.20
27	15.69	19.50	17.43	1.243	1.111	21	2	8	−.91	−.62
28	52.03	59.88	43.49	1.151	.836	15	8	11	−2.09	1.65
29	14.69	12.00	11.55	.817	.786	18	1	16	.67	2.54
30	21.89	NA	14.49	NA	.662	20	0	2	0	1.05
31	28.98	26.66	28.52	.920	.984	13	3	17	.30	.14
32	11.19	NA	7.65	NA	.684	20	0	9	0	3.44
33	15.14	12.77	11.08	.844	.732	18	5	11	.96	2.30
34	8.18	NA	6.48	NA	.793	14	0	12	0	1.11
35	9.23	12.17	2.88	1.319	.312	19	6	1	−1.95	1.82
36	11.97	NA	8.23	NA	.687	20	0	17	0	3.04
37	9.44	NA	10.51	NA	1.114	10	0	13	0	.64
38	5.74	5.49	5.99	.956	1.043	10	2	3	.15	.18
39	7.20	NA	9.86	NA	1.369	12	0	11	0	−2.08
40	7.00	3.99	9.52	.570	1.360	19	1	5	1.94	−1.92
41	71.55	46.50	17.25	2.158	.800	8	2	4	−5.01	1.10
42	8.84	6.99	6.38	.790	.721	21	1	10	.50	1.81
43	7.49	2.99	7.84	.399	1.047	14	1	4	1.85	.18
44	9.25	7.50	6.53	.811	.706	8	1	16	.35	1.88
45	8.95	NA	7.49	NA	.838	20	0	8	0	1.88
46	11.26	5.59	9.27	.497	.823	13	1	16	1.53	1.46
47	34.24	NA	30.21	NA	.882	16	0	11	0	.93
48	7.32	NA	8.39	NA	1.146	21	0	11	0	−1.17
49	9.96	NA	10.92	NA	1.096	16	0	14	0	.80
50	7.92	13.00	7.91	1.641	.998	23	1	12	−1.74	.01
51	9.96	NA	8.38	NA	.841	21	0	12	0	1.16
52	10.29	NA	5.99	NA	.582	11	0	4	0	2.42
53	50.20	60.60	43.71	1.207	.671	19	10	7	−1.13	.99
54	23.32	29.61	15.99	1.270	.695	21	13	5	−2.25	2.09
55	20.38	28.92	NA	1.096	NA	18	13	0	−.55	0
56	4.81	NA	NA	NA	NA	8	0	0	0	0
57	25.85	31.33	23.48	1.212	.908	8	6	12	−2.78	.84
58	26.07	29.90	20.49	1.147	.786	13	11	6	−1.00	1.47
59	17.80	31.50	12.69	1.760	.709	20	2	17	−2.60	2.73
60	11.32	NA	19.99	NA	1.765	3	0	1	0	−1.13
61	21.73	27.35	18.34	1.259	.844	8	8	7	−2.08	1.11
62	5.84	NA	4.20	NA	.720	15	0	7	0	.92
63	24.60	25.33	NA	1.030	NA	10	9	0	−.19	0
64	9.36	22.95	9.77	2.452	1.043	23	1	14	−3.44	−.32
65	18.76	23.32	15.69	1.243	.836	14	3	19	−.88	1.44
66	44.06	69.00	NA	1.566	NA	13	3	0	−2.33	0
67	42.45	48.04	NA	1.132	NA	19	14	0	−.87	0
68	41.00	50.70	39.75	1.237	.969	18	12	4	−1.76	.17
69	46.05	49.79	45.00	1.081	.977	17	10	1	−.75	.08
70	24.77	36.63	12.90	1.479	.521	18	15	1	−2.26	.93
71	26.00	26.99	NA	1.038	NA	1	1	0	0	0
72	11.15	NA	9.98	NA	.895	3	0	2	0	.41
73	16.74	NA	10.95	NA	.654	14	0	1	0	1.10
74	38.37	93.50	35.00	2.437	.912	13	4	1	−2.92	.35
75	30.99	34.38	22.56	1.110	.728	21	5	10	−.58	2.16
76	25.63	17.48	18.49	.682	.721	17	4	6	2.06	2.23
77	39.71	39.17	42.49	.986	1.070	20	11	2	.12	−.28
78	12.65	25.43	11.64	2.009	.920	21	2	17	−3.16	.74
79	11.74	NA	10.07	NA	.858	18	0	10	0	1.18
80	12.96	16.63	10.31	1.283	.795	20	11	3	−2.15	1.22
81	16.46	20.14	12.99	1.223	.789	15	7	2	−1.81	1.06
82	17.53	18.00	13.63	1.027	.777	15	1	4	−.08	1.15
83	15.60	20.00	12.91	1.282	.828	14	1	20	−.51	1.16
84	13.49	NA	9.54	NA	.707	16	0	9	0	2.11
85	15.74	18.99	14.99	1.206	.952	8	2	11	−1.02	.47

TABLE A-1—Continued

PROD	P_d	P_A	P_B	P_A/P_d	P_B/P_d	#d	#A	#B	t_A	t_B
86	8.28	NA	9.22	NA	1.114	20	0	13	0	−.72
87	15.85	20.00	13.27	1.262	.837	15	1	19	−.53	1.25
88	10.16	NA	9.60	NA	.944	20	0	14	0	.45
89	20.01	26.31	12.66	1.315	.633	17	6	3	−1.42	1.73
90	16.27	23.79	NA	1.462	NA	16	5	0	−3.44	0
91	15.52	15.66	NA	1.009	NA	21	9	0	−.08	0
92	16.50	19.31	NA	1.171	NA	10	3	0	−.94	0
93	17.01	17.99	16.52	1.057	.971	17	3	3	−.30	.14
94	42.84	118.71	30.78	2.771	.719	12	4	5	−2.65	.59
95	61.78	159.58	55.96	2.583	.906	18	12	9	−4.27	.37
96	54.60	91.42	39.88	1.674	.730	14	20	1	−2.65	.44
97	7.73	8.14	8.45	1.054	1.094	21	4	11	−.21	−.51
98	7.68	4.91	NA	.639	NA	19	6	0	1.97	0
99	32.95	19.95	NA	.605	NA	18	1	0	1.00	0
100	7.76	6.07	5.75	.782	.742	15	12	4	2.95	2.01
101	118.69	140.15	78.00	1.181	.657	15	8	3	−1.22	1.76
102	18.64	21.05	13.98	1.129	.750	6	6	4	−.69	1.11
103	21.35	NA	NA	NA	NA	11	0	0	0	0
104	31.65	39.00	1.98	1.232	.063	3	1	1	−.28	1.11
105	14.73	18.17	3.99	1.234	.271	12	16	1	−1.07	1.26
106	25.19	16.78	11.09	.666	440	18	10	8	2.55	4.21
107	25.93	42.95	20.99	1.656	.810	20	1	3	−2.18	1.10
108	18.06	8.99	10.82	.498	.599	11	4	10	2.49	2.77
109	16.97	31.00	14.41	1.827	.849	7	3	14	−2.10	1.05
110	5.54	NA	7.67	NA	1.383	16	0	7	0	−1.63
111	2.41	2.17	1.87	.902	.777	17	6	7	1.36	3.29
112	10.13	8.95	NA	.883	NA	11	1	0	.20	0
113	12.58	13.64	10.16	1.084	.808	12	16	6	−.84	1.46
114	23.73	28.61	NA	1.206	NA	17	14	0	−2.45	0
115	19.85	NA	NA	NA	NA	16	0	0	0	0
116	38.57	36.77	NA	.953	NA	15	10	0	.28	0
117	99.99	130.62	94.00	1.306	.940	1	10	2	−1.31	.69
118	16.58	10.93	17.99	.659	1.085	20	6	1	4.43	−.46
119	14.25	NA	NA	NA	NA	22	0	0	0	0
120	18.87	20.71	17.25	1.098	.914	19	11	11	−1.00	.83
121	78.05	96.07	59.98	1.231	.769	22	15	2	−1.49	.65
122	238.94	199.57	176.69	.835	.739	10	15	4	1.47	1.85
123	130.75	102.70	NA	.785	NA	9	20	0	2.46	0
124	24.61	15.46	14.70	.628	.597	10	8	9	1.24	2.09
125	1.82	2.04	1.00	1.120	.546	14	19	2	−.89	1.38
126	19.89	13.45	13.23	.676	.665	9	8	4	1.16	.92
127	59.14	63.06	62.84	1.066	1.063	12	7	7	−.49	−.65
128	7.10	20.14	2.22	2.837	.313	17	8	1	−5.58	1.16
129	5.30	1.99	3.64	.375	.686	12	1	13	2.13	1.83
130	8.45	18.25	NA	2.161	NA	20	12	0	−3.66	0
131	2.89	2.86	2.69	.987	.929	8	12	6	.16	.79
132	2.04	NA	1.23	NA	.604	8	0	1	0	.57
133	16.92	17.99	9.86	1.063	.583	7	1	8	−.11	1.90
134	24.29	NA	18.12	NA	.746	4	0	11	0	1.60
135	27.13	41.07	20.30	1.514	.748	9	9	11	−1.70	1.98
136	7.95	7.61	1.27	.957	.159	5	5	9	.10	4.10
136	2.48	NA	2.83	NA	1.141	15	0	3	0	.77
138	9.10	10.00	3.99	1.099	.439	9	1	1	−.29	1.61
139	261.57	186.30	180.46	.712	.690	5	9	10	1.39	1.42
140	117.94	77.02	83.27	.653	.706	3	11	6	2.70	1.53
141	52.45	37.51	36.35	.715	.693	2	10	10	1.02	2.10
142	410.98	378.16	338.54	.920	.824	20	17	3	.96	1.63
143	64.15	51.69	26.74	.806	.417	6	12	4	.56	1.48
144	36.97	58.19	39.01	1.574	1.055	18	13	6	−1.54	−.29
145	3.20	3.23	NA	1.010	NA	16	7	0	−.06	0
146	120.15	109.99	NA	.915	NA	9	1	0	.39	0
147	151.99	131.54	125.00	.865	.822	4	11	3	1.25	1.44
148	31.98	29.00	38.78	.907	1.213	10	1	8	.79	.47
149	7.99	NA	22.00	NA	2.753	3	0	1	0	0
150	48.27	NA	NA	NA	NA	12	0	0	0	0
151	162.03	NA	NA	NA	NA	11	0	0	0	0
152	3.06	.32	2.81	.105	.920	5	3	2	1.20	.08
153	124.49	106.99	179.00	.859	1.438	2	4	1	.40	−.58
154	60.54	106.25	45.23	1.755	.747	13	4	8	−2.08	1.34
155	9.56	10.00	5.29	1.047	.553	9	1	15	−.15	4.86
156	27.30	34.87	NA	1.277	NA	10	16	0	−1.30	0
157	22.80	NA	22.05	NA	.967	13	0	17	0	.19
158	174.48	119.50	41.25	.685	.236	2	1	5	.21	1.60
159	464.41	400.63	NA	.863	NA	14	12	0	1.67	0
160	6.70	8.74	2.39	1.304	.357	18	8	5	−1.64	9.42
161	7.54	7.60	6.49	1.008	.862	17	15	4	−.07	.89
162	5.72	6.57	6.85	1.147	1.197	8	17	1	−.81	−.42
163	1.33	2.02	NA	1.522	NA	20	18	0	−2.36	0
164	.93	1.06	1.09	1.139	1.174	11	8	4	−.86	−.82
165	8.87	15.29	10.35	1.724	1.167	3	6	4	−1.26	−.76
166	487.77	317.84	249.00	.639	.500	5	9	1	2.39	5.80
167	6.56	8.49	4.59	1.295	.700	14	14	1	−1.10	.54
168	6.82	10.98	8.65	1.611	1.269	3	1	3	−2.47	−.90

Symbols: PROD = product identification number. P_d, P_A, P_B = average price for domestic, region A import, and region B import goods, respectively. #d, #A, #B = number of sample observations for domestic, region A import, and region B import goods, respectively. t_A, t_B = t statistics for test on difference of price means for domestic versus (i) region A and (ii) region B, respectively.

TABLE A-2.—IMPORTS OF CONSUMER PRODUCTS BY PRODUCT GROUP

[In millions of 1975 dollars]

Product group and number	SITC import code	Value of imports from— Region A	Region B
I. Clothing: 1-52	84	533.2	1,991.3
II. Footwear: 53-93	851	757.8	518.2
III. Hardgoods:			
Watches, clocks: 94-97	864	289.2	137.1
Tools:			
98, 100	695.2	156.5	21.6
99	729.6	25.0	.1
Recreational:			
101, 103	733.1	109.9	23.6
102; 104-112	894.4	164.1	75.1
Small appliances:			
113-115; 118-121	725.03	28.0	1.4
116	725.04	34.2	.3
117	725.01	25.4	.7
Typewriters, calculators:			
122,123	714.1	143.7	5.9
124	714.3	128.5	.5
Housewares:			
125, 127, 152	666	238.5	22.0
126-128, 130-131, 135-136	697.2	63.7	37.2
129	NA	NA	NA
132, 137, 138	6569170 [1]	2.9	4.4
133, 134	6327220 [1]	13.8	32.9
Radio, TV, stereo:			
134	891.1	526.5	76.6
140, 141	724.2	366.8	293.9
Photographic equipment: 143-145	861.4, 861.5, 861.6, 862.4	399.0	24.4
Furniture: 146-150	821	328.9	68.4
Floor, wall coverings: 151, 153	657	57.8	45.9
Miscellaneous:			
154, 157	831	54.5	162.9
155	8994100 [1]	3.4	18.4
156	897.1	92.9	34.2
158	891.4	27.5	6.7
159	697.1	15.4	17.6
160, 164	8943400 [1]	41.5	3.5
161	8612210 [1]	26.7	4.7
162	690520	5.5	.1
163	5541000 [1]	4.1	.3
166	717.3	172.0	13.8
167	8992420 [1]	10.1	1.9
168	8942420 [1]	7.8	7.2
Total, group III		3,563.8	1,143.3
Total, groups I-III		4,854.8	3,652.8

[1] U.S. schedule A, Department of Commerce.

Source: (1) SITC data: United Nations, "Commodity Trade Statistics 1975: United States," ST/ESA/STAT ser. D/77-14. (2) Schedule A data: U.S. Department of Commerce, FT 135, December 1974," U.S. General Imports: Schedule A Commodity by Country."

TABLE A-3.—REGRESSION ANALYSIS: COEFFICIENTS ON IMPORT DUMMY VARIABLES
[t-statistic in parentheses]

Product group	Regression coefficients on imports from— Region A	Region B	Number of observations	R^2
I. Apparel	−0.195 (3.18)	−0.0062 (0.19)	1464	0.367
II. Footwear	0.425 (9.47)	−0.213 (5.06)	1074	0.339
III. Hardgoods:				
Watches, clocks	0.976 (5.18)	0.362 (1.68)	130	0.629
Tools	−0.284 (2.89)	−0.283 (1.45)	74	0.807
Recreational goods	0.300 (2.17)	−2.202 (1.47)	260	0.536
Small appliances	0.108 (2.00)	−0.107 (1.14)	214	0.891
Typewriters, calculators	0.729 (2.17)	0.683 (1.28)	84	0.216
Housewares	0.313 (3.84)	−0.309 (3.48)	308	0.811
Radio, TV, stero	−0.272 (2.86)	−3.26 (2.79)	105	0.859
Photographic equipment	0.806 (3.54)	0.579 (1.68)	81	0.573
Furniture	−0.011 (0.07)	0.054 (0.38)	62	0.841
Floor, wall coverings	−0.687 (0.85)	−1.065 (1.03)	27	0.792
Miscellaneous	0.218 (2.59)	−0.013 (0.12)	357	0.860

Source: Project calculations.

TABLE A-4.—REGRESSION ANALYSIS: COEFFICIENTS ON DUMMY VARIABLES FOR CITY, STORE TYPE BUDGET AREA, AND LOCATION
[t-statistics in parentheses]

Dummy variable	I. Apparel	II. Footwear	III. Hardgoods[1]
City:[2]			
Chicago	0.059 (1.3)	−0.141 (2.7)	0.262 (2.2)
Los Angeles	0.018 (0.04)	−0.005 (0.1)	0.449 (3.8)
Philadelphia	0.060 (1.4)	−0.049 (1.0)	0.232 (2.04)
Store type:[3]			
Department	0.391 (9.5)	0.327 (6.5)	0.532 (4.4)
Discount	−0.427 (9.3)	−0.463 (8.5)	−0.970 (0.8)
Specialty	0.256 (6.0)	0.202 (4.6)	0.098 (0.9)
Budget area[4]	−0.377 (3.6)	NA	NA
Center city[5]	−0.082 (1.9)	−0.012 (0.2)	0.222 (1.9)

[1] Pool of all hardgoods sectors except watches and clocks, typewriters and calculators, and photographic equipment.
[2] Base=Atlanta.
[3] Base=Chain stores.
[4] Base=Regular areas of store.
[5] Base=Suburban shopping center and other.

TABLE A-5.—PRODUCT WEIGHTS FOR CONSUMPTION OF LOW-INCOME FAMILIES

Survey category	BLS category[1]	Weight[2]
Apparel	Clothing	0.543
Footwear		.114
Watches, clocks	NA	NA
Tools	NA	NA
Recreational goods	NA	NA
Small appliances	Small appliances	.015
Typewriters, calculators	NA	NA
Housewares	Housewares	.010
Radio, TV, stereo	Television	.077
Photographic equipment	NA	NA
Furniture	Furniture	.147
Floor, wall coverings	Floor coverings	.040
Miscellaneous	Household miscellaneous	.054
Total		1.000

[1] Bureau of Labor Statistics, "Consumer Expenditure Survey: Integrated Diary and Interview Survey Data, 1972-73," bulletin 1992, Washington, D.C., 1978, pp. 28-29.
[2] Calculated from ibid. Disaggregation of clothing into apparel and footwear applies consumer expenditures on the 2 sectors in 1973, as reported in C. Almon, Jr., M. Buckler, L. Horwitz, and T. Reimbold, "1985: Interindustry Forecasts of the American Economy" (Lexington, Mass.: Lexington Books, 1974), p. E10.

APPENDIX B.—METHODOLOGY AND IMPLEMENTATION OF THE SAMPLE SURVEY

DOMESTIC-IMPORT PRICE COMPARISON STUDY: METHODOLOGY REPORT

Preliminary work took the form of meetings with representatives of several companies heavily involved in the retailing of both domestic and imported goods. Their opinions were sought on such questions as: For what goods would both domestic and imported versions be found in the stores? Which four cities would provide a good representation of the total U.S. retailing market? Which time of year would be best for doing the study? What kinds of stores should be included?

Meetings were held with representatives from Montgomery Ward, Sears Roebuck and Co., K-Mart, and the Associated Merchandising Corporation. In addition, some time was spent making store visits in Champaign-Urbana and in Chicago, to learn more about what was available.

The methods of the Consumer Price Index were also studied, and inquiry was made into using some of the CPI specifications for this study. This did not work out, however, since the CPI procedure has recently changed quite radically from specifying items very precisely to leaving a lot of choices to the pricer. In addition, the objectives of the two surveys were very different, that of the CPI being to follow price trends of items over time, while ours was to compare the domestic and import prices of an item at one point in time.

It was decided that the four cities to be included would be Los Angeles, Chicago, Atlanta, and Philadelphia, and that the period of pricing would be the month of August, to allow time for the summer merchandise to be largely cleared away and the new fall merchandise to be stocked. All four store types—department, chain, discount, and specialty—would be included. These were defined as follows:

Chain stores are large stores containing a variety of departments with nationwide branches located in the major cities of the United States. Examples of stores meeting the criteria of chain store for this study are Sears Roebuck & Co. and J.C. Penney Co.

Department stores are large stores containing a variety of departments. However, their marketing area is limited to the city or region in which they are located. In each city all major department stores were visited.

Discount stores are also large stores containing a variety of departments. However, the distinguishing feature of these stores is the selling of merchandise in volume at reduced prices. Stores that specialize in only one type of item, for instance, discount clothing, were not included. Four discount stores were surveyed in each city.

Specialty stores are relatively small, non-departmentalized stores which sell primarily one type of item, for instance, men's and women's clothing stores, sporting goods stores, hardware stores, and jewelry stores. Every type of specialty store which corresponded to the types of items being priced was surveyed in each city. However, the number of stores visited of any one type varied across cities. For example, shoe stores were visited in every city, but the number of shoe stores visited per city fluctuated with the ease or difficulty of ascertaining a domestic and imported price on the specific shoe under investigation. The total number of specialty stores surveyed per city were Atlanta, 95; Chicago, 72; Los Angeles, 68; Philadelphia, 61.

Initially, the plan was to price 100 items (40 apparel, 20 footwear, and 40 hardgoods), obtaining five domestic and five imported price observations for each item. The number of items specified was expanded to 168, to allow for unavailability of some items in one or more locations, and the number of price observations desired was changed from five to a minimum of four and a maximum of six. Ideally, a pair of observations (an imported and a domestic version) would be obtained from each store type. Approximately 50 apparel, 40 footwear, and 75 hardgoods items were specified.

Data from the national Consumers Expenditures Survey of 1972–73 and from Commerce Department reports on imports were used to establish the initial, somewhat broad, categories to be priced. The chain store catalogues (which indicate imported items) were used as an aid to selection and specification of products. A complete listing of the item specifications, designed to maintain comparable quality of the items priced, is presented in Table B–1.

Since imported goods must, by law, be clearly labeled as to country of origin, the absence of such labelisg was taken to indicate domestic manufacture or assembly. For the purposes of this study, country of origin was determined by where the item was assembled, if that differed from the origin of materials used.

A limited field period (6 days in each city) and budgetary considerations necessitated an efficient and economical study design. Information from leading department stores across the country indicated that within a city prices on items between branches of a store tended to be identical. Therefore, if only one store of any number of branch outlets was surveyed, the prices collected would be representative of all branches of that store. For instance, if one store of the many Marshall Field stores in Chicago was visited, those prices would represent all Marshall Field stores in Chicago.

With this information and the goal of collecting approximately 340 prices (170 domestic and 170 imported) in 4 types of stores within a limited field period, the most reasonable approach to achieve this goal was to visit areas in which the 4 types of stores were clustered, namely, shopping centers and downtown shopping areas.

The shopping centers visited were designated on the basis of containing at least one chain, one department, and a variety of specialty stores. These 3 types of stores were worked simultaneously at each selected shopping center and downtown area until all chain stores and the major department stores had been surveyed. Downtown locations were worked in all cities to ensure representation of small stores and shops in that area. Since discount stores are not generally located in shopping centers or in downtown areas, these stores were visited on separate trips. Some specialty stores, such as hardware stores, are not usually located in major shopping centers; these, also, were worked on separate trips. In general, cooperation from the managers of the selected stores was good. Incidents of refusals or hesitation to participate in the survey were few and primarily from specialty stores.

The data collectors for each city (except Chicago) consisted of a team of 4 SRI staff members plus a local person who had been recommended by a research organization in the area. In addition to serving as a data collector, a secondary function of the local person was to advise the staff members of the best routes through the cities and to supply additional information about shoppisg areas. This assistance tended to increase the efficiency of the field operation.

The data collection team worked the entire item list in every chain, department, and discount store surveyed. Obviously, in specialty stores only the prices for items which pertained to that type of store were collected. In some cities where a specified item was not available substitutions were made. For instance, in Los Angeles downhill skis were not available, so another sporting good item was substituted. Substitution due to unavailability of an item was a minor problem since most items were fairly common consumer goods available in most stores and cities. Approximately 1,000 prices per city were gathered during the month of August, 1978. The data collection periods for each location were as follows:

Chicago [1]—August 1–2, 8–18.
Los Angeles—August 14–19.
Philadelphia—August 21–26.
Atlanta—August 22–26.

The instructions to data collectors appear in Annex B–1. A few changes were made after the beginning of the field work and these are footnoted.

ANNEX B–1.—FIELD INSTRUCTIONS FOR STUDY #333

PURPOSE AND OBJECTIVES

The purpose of this study is to compare the retail price of a number of different items of merchandise that are produced in this country with items of essentially the same quality that are sold in this country but are imported from elsewhere. To do so, we shall be seeking price information on the domestic and imported versions of approximately 100 products in each of four cities. The products are divided into broad categories such that we shall be seeking price quotations on approximately 40 items of apparel, 20 footwear items, and 40 hardgoods items.[1] The cities in which this information will be sought are widely scattered major urban areas of the country, namely, Chicago, Philadelphia, Atlanta and Los Angeles.

To allow for differences in pricing policies and other factors, five price quotations are to be sought for each of the domestic and imported versions of each item in each city. As a result, we will be seeking in this study from each city, 500 price quotations for items of retail merchandise produced domestically, and 500 price quotations for corresponding items that are imported from other countries.

The prices of these items are to relate to prices asked in the store, as noted by the price tags. Where there is any question, the focus of the data collection operation is on the fall merchandise lines, not on merchandise lines that are presently being depleted.

---

[1] Because Chicago served as a training ground for all field personnel, and because of some procedural changes made after the start of field work, data collection here was carried out over a longer period than elsewhere.

[1] The number of items was expanded as described on p. 3 of the Methodology Report.

TABLE B-1.—ITEM SPECIFICATIONS

Number	Item	Specification
1	All-weather coat	Cotton-poly blend poplin, single-breasted trench coat—zip or button out pile lining: belt, pockets.
2	Pants	Elastic waist, polyester knit, front creases stitched, solid color.
3	Bow blouse	Polyester knit, button front, bow-neck, cuffed long sleeve.
4	Shirt	Polyester knit, pointed collar, cuffed long sleeve, front-button placket.
5	do	50/50 poly-cotton plaid tailored shirt, front-button placket, cuffed long sleeve.
6	Cardigan sweater	V-neck, 2 front patch pockets, ribbed orlon acrylic, set-in sleeve.
7	Pants	Corduroy, front zipper, waist band, elaborate pocket trim.
8	Shell	Sleeveless, double-knit nylon or polyester, plain jewel neckline, long zipper.
9	Ski jacket	Nylon, fiber filled, multicolored, zip front, 19–24 in long.
10	Vest	Junior sizes, corduroy, 3–4 buttons, patch pockets.
11	Hat	Acrylic knit, ski cap type, solid color.
12	Velour pullover	V-neck or crew neck, cotton-poly ribbed cuffs, neckline, bottom.
13	Yoked blouse	Junior size, poly-crepe, round collar, gathered at yoke, long sleeve, cuffs, button front.
14	Scarf	27-in square, polyester (silky look), decorative design.
15	Gloves	Women's leather look, acrylic-knit lined, 11-in long.
Men's apparel:		
16	Down-look jacket	Quilted nylon shell, hip length, hood, closed pockets; regular size.
17	All-weather coat	Cotton-polyester blend, zip or button out lining of acrylic pile, pockets, above knee length.
18	Knit shirt	Long-sleeve pullover, poly-cotton knit, collar, 4-button placket; 1 pocket, solid color.
19	Plaid shirt	100 percent cotton flannel, 2 flap pockets, shirttails.
20	Dress shirt	65-percent poly/35-percent cotton broadcloth, long sleeve, 1-button cuff, chest pocket, solid color.
21	Dress shirt	Same as above, but short sleeved.

TABLE B-1.—ITEM SPECIFICATIONS—Continued

Number	Item	Specification
Men's apparel:—Continued		
22	Dress slacks	Double-knit poly, slant front, inset back pockets, flared, Ban-rol type of waistband.
23	do	Woven polyester, slant front, inset back pockets, flared, Ban-rol type of waistband, solid color.
24	Fashion jeans	Western style, front scoop pockets, embroidered or pleated back pockets, regular denim.
25	Jeans, regular	Perma-press, 100-percent cotton: scoop front, patch back pockets, flared (orange stitching).
26	Pullover	Wool blend (70–80 percent) full-fashioned or set-in sleeves, rib-knit trim cuff, hem, neck.
27	V-neck pullover	Orlon acrylic, long set-in sleeves, solid color.
28	Sport coat	Corduroy, single-breasted, nylon lining, 2 patch pockets.
29	Western shirt	Cotton-poly plaid, snap or button closures with yoke.
30	Robe	Kimono-style wraparound velour (acetate-nylon) patch pockets, solid color, knee kength.
	Terry cloth robe	Same type.
31	Men's warmup suit	100-percent acrylic, rib-knit cuffs and waist, zippered jacket, straight leg pants.
32	Pajamas	Button coat style, elastic waist, long sleeve, ankle-length pants, poly-cotton fabric.
33	Turtleneck	Medium-weight knit, solid color, pullover, 100 percent acrylic.
Girls' apparel:		
34	Shirt, 7-14	50/50 poly-cotton broadcloth; long sleeve, 1-button cuff, shirttails, solid color.
35	Slacks, dress 7-14	Double-knit acrylic, elastic waist, button trim on waist.
36	Jeans, 7-14	Western style, front scoop and back patch pockets, 100 percent cotton denim, solid colors.
37	Sweater, 7-14	V-neck, cable stitch, ribbed collar and cuffs, acrylic, solid color.
38	Turtleneck pullover	Nylon-poly rib knit; long sleeve, reinforced cuffs and bottom; solid color.
39	Sweater vest	Ribbed pullover, ribbed trim on neck, armhold, and waist.
40	Sweatshirt	Sized 2-6x; hood, zipper front, acrylic-cotton blend. 2 pockets, knit cuff, wasitband.
41	Snowsuit	Infant, newborn to size 2, 1-piece nylon, zip-up front with legs.
42	Knit pants set	Toddler girl; poly-cotton blend striped or printed top, pull on pants.
43	Coveralls	Infant size; cotton corduroy, zipper front, crotch snaps, solid color, trimmed collar.
Boy's apparel:		
44	Flannel shirt	Printed plaid; size 8-16; long-sleeve 100 percent cotton flannel.
45	Pajama	Coat style; polyester flannel.
46	Nylon warmup jacket	Flannel lined, shirt style collar, snap front slash pockets, elasticized wrists, drawstring.
47	Down-look jacket	(Size 8-20) stand-up collar, flap patch pockets, hood, zip front, storm flap.
48	Knit sportshirt	Collar and placket style, 3- or 4-button, long sleeve, square hemmed bottom.
49	Sweater	Crew neck, acrylic-blend knit, set-in sleeve.
50	Jeans	Western style, front scoop pockets, set-in back pockets, reinforced knees, flared legs.
51	Dress pants	Polyester knit, modified flare, 2 front slash and 2 back pockets.
52	Shirt-overall set	Infant size; knit poly-cotton shirt, corduroy overalls, snap crotch.
Women's shoes:		
53	Dress boots	Leather uppers, full-length zipper, about 15-in. high, unlined.
54	Women's leather casual shoes.	Slip-on style; cushioned lining, crepe wedge sole.
55	Classic pump	Leather uppers, 1¾-in. heel—closed heel and toe.
56	Plastic rain boots	Clear or smoke color, slightly over ankle height.
57	Casual boots	Uppers man-made; full-length side zipper; 2-in. heel; crepe sole and heel.
58	Sandals	Open toe, 3-5 crossed straps, leather uppers; 2-3 in. heel.
59	Traditional slip-on	Crepe sole covered wedge heel 1½-2 in., man-made upper with gathered moc-toe.
60	Leather mocs	Unlined, all leather or suede.
61	Athletic shoes	Smooth leather uppers, suede split leather trim, padded collar, vinyl soles.
62	Slippers	Women's scuffs, open heel and toe, acrylic uppers, vinyl soles.
63	Sling back pump	Uppers man-made materials, closed toe, adjustable strap, approximate 2-in. heel.
64	Oxford sneakers	Cotton duck upper, rubber sole, no trim, 4 eyes.
Men's shoes:		
65	Athletic shoes	Nylon upper with split leather reinforced toe, heel, eyelet area; traction treaded.
66	4½ strap and buckle boots.	Plain toe adjustable strap, leather upper, leather sole.
67	Classic oxford	Plain toe, tie shoe, leather upper and sole.
68	Moc-toe slip-on	Leather upper and sole, matching leather vamp band.
69	Dress shoes	Strap and buckle slip on, calfskin upper, leather lined; leather sole.
70	Mens chukka boots	Sueded split-leather uppers, unlined moc-toe styling, crepe rubber sole and wedge heel.

TABLE B-1.—ITEM SPECIFICATIONS—Continued

Number	Item	Specification
Men's shoes:—Continued		
71	Rubber and leather boots	Leather shaft, rubber sole and heel, chain tread sole, unlined.
72	Zippered rubber dress boots.	Black, zipper front, lined.
73	Romeo style slippers	Leather with man-made sole.
74	Monk strap	Leather with man-made sole and heel.
75	Work style boots	Leather uppers, 6-8 in high, traction tread soles and heels.
76	Work shoes	Black oxford, rubber soles and heels, leather uppers.
77	Hiking boots	Rubber soles and heels lugged for traction, cushioned insole, leather uppers.
78	Tennis shoes	Cotton canvas uppers, reinforced rubber toe, metal eyelets, rubber soles.
Girls' shoes:		
79	Casual shoes	Moc-style T-strap casuals; vinyl uppers; buckle strap; wedge heel, cushioned nylon tricot linings; rubber outsoles.
80	do	Sueded oxfords; suede split-leather uppers; rubber outsoles and wedges with ridged bottoms.
81	do	Strap and buckle slip-on. Leather uppers with contrast stitched trim. Moc-toe styling, any synthetic ribbed wedge bottom.
82	Saddle shoes	White leather uppers with vinyl trim; oblique toe; sturdy foam sole and wedge heel.
83	Jogging shoes	Nylon and sueded split-leather uppers; vinyl stripes; nylon tricot lined; padded vinyl collar, peaked back; rubber toe guard; traction-treaded rubber sole; cushioned insole.
84	Dress shoes	T-strap; crinkle vinyl upper; cutout design across vamp; vinyl sole and heel.
85	Boots	Approximately 10 in high, vinyl upper, man-made sole and heel, unlined, full-length side zipper.
86	Oxford sneakers	Rubber sole, canvas uppers.
Boys' shoes:		
87	Athletic shoes	Nylon upper with split-leather reinforced toe, heel, eyelet area; traction-treaded sole.
88	Tennis "sneakers"	Oxford style, cotton duck uppers; metal eyelets, rubber soles.
89	Hiking boots	Padded collar, speed laces, leather uppers.
90	Leather oxfords	Moc-toe, 3-4 eyelets, leather uppers, ridged sole and heel.
91	Oxford casuals	Moc-toe, suede split-leather uppers, contrast stitching on vamp, crepe style shoes.
92	Slip-ons	Plain toe, monk straps, leather uppers, adjustable buckled strap.
93	Work-style boots	Leather uppers, 6-8 in high, traction tred sole and heel.
Watches:		
94	Men's watch, metal band	LED (light omitting diode) display of red light, 5 function (hours, minutes, seconds, day, and date), quartz movement.
95	do	LCD (liquid crystal display) constant readout, 5 function, quartz movement.
96	Men's watch	Hour, minute, and sweep hand; day of the week and date display; 17-jewel movement, self-winding; metal case and band.
97	Watchband	Men's expansion link, metal, 1 piece.
Tools:		
98	Hammer	16-oz steel head, wood handle, curved claw.
99	Electric drill	¼ variable-speed reversible; insulated; ⅙-⅕ hp, 2.4 to 3.2 amps (no top or side handle).
100	Pipe wrench	10-in size, heavy duty.
101	Bicycle	Men's lite-weight, 10 speed, 23-in frame, 26-in or 27-in wheels, drop bars.
102	Volleyball	Leather, official size and weight.
103	Tricycle	12-in front wheel, metal frame.
104	Cross-country skis	Light touring, fiber glass.
105	Fishing reel	Ultra-light spin cast reel (ex. Zebco 113).
106	Tennis racquet	Nylon strung, leather grip, hardwood-ply construction.
107	Camp stove	Double burner, white gas or propane.
108	Backpack	Nylon, padded shoulders, zippered pockets, no frame (record size .
109	Soccer ball	Regulation, leather covered.
110	Jump rope	Swivel handles, with nylon bearings.
111	Tennis balls	Cannister of 3 regulation size and construction USTA approved.
112	Children's roller skates	All metal, outdoor use, fits on shoe.
Small appliances:		
113	Mist curling iron	20-40 W, dot signal when ready for use.
114	Mist hair curling rollers	20 rollers in an electric cabinet, between 200 W and 300 W.
115	Cordless electric toothbrush.	Comes with several brushes.
116	Men's electric shaver	Foil head, not rotary, cord model, not rechargeable, built-in trimmer.
117	Compact refrigerator	Between 2 and 3 ft^3 capacity, freezer section.
118	Hand mixer	5-speed electric, chrome-plated beaters, pushbutton ejector, approximately 90-100 W, plastic case (no rack, bowls).
119	2-slice automatic toaster	Snap-open crumb tray.
120	Blow hair dryer	1,000-1,200 W, low and high settings for speed and heat (no attachments).
121	Food processor	Stainless steel blade, plastic housing, plastic container, 2-4 additional cutting disks.

TABLE B-1.—ITEM SPECIFICATIONS—Continued

Number	Item	Specification
Small appliances:—Continued		
Typewriters, calculator:		
122	Electric typewriter	12-in power return, standard (not cartridge) ribbon.
123	Manual typewriter	12-in carriage, portable, back-space, full-width tabulator, steel frame, plastic shell.
124	Calculator	Inexpensive, 6-function, square root and % keys, 8-digit display, floating decimal, LED display, memory.
Hard goods—		
Housewares:		
125	Coffee mugs	Ceramic, 8-10 oz capacity, simple or no design.
126	Steak knives	6-piece steak set; stainless steel blades, wood holder, flat board (not box or cube base).
127	Stoneware dinner sets	45-piece service for 8, oven proof and dishwasher safe.
128	Frying pan	Teflon-like (nonstick) interior, painted porcelain enamel exterior; 10-in open skillet.
129	Kitchen (diet) scale	Comes with bowl, weighs up to 1 lb, marked in ounces and grams.
130	Meat slicing knife	Stainless steel, 9–10 in, smooth (nonserrated) edge.
131	Corkscrew	Winged style, chrome plated.
132	Toaster cover	2-slice size, vinyl material.
133	Spice rack	Colonial hard-wood rack, 12 bottles.
134	Wooden salad bowl set	3-piece bowl and 2 servers.
135	Tableware	50-piece service for 8, stainless steel flatware, knives have forged blades.
136	Kitchen shears	Heavy-duty blades.
137	Placemats	Poly-cotton blend, not quilted.
138	Tablecloths	52 in by 70 in, cotton, permapress.
Radio, TV, stereo:		
139	Stereo phonograph	With AM-FM radio and 8-track player. 3-speed record changer on top of receiver with 2 separate speakers. 100 percent solid state, separate bass, volume, and treble controls; AFC. Simulated wood grain. Diamond needle, ceramic cartridge. Head phone jack. 2 speakers per cabinet, approximate 5-in. speaker. Comes with dustcover, adjustable stylus pressure. (No antiskating adjustment, pressure magnetic cartridge, cueing lever, or Dolby noise reduction feature.)
140	CB radio	40-channel mobile unit, 100 percent solid state LED read out (on unit, not mike) 4 W output power PLL digital frequency synthesizer (needs no crystals; no automatic scanning, antennas).
141	Digital clock-radio	Snooze control; AM/FM, 100 percent solid state.
142	Color TV	19 in portable; VHF to UHF, 100 percent solid state chassis.
Photographic equipment:		
143	Binocular	Standard angle, 7 by 35 mm lens.
144	110 camera	Uses 110 film cartridge, built-in telephoto lens, 24–25 mm lens, automatic exposure.
145	Camera film	35 mm, 36 exposure, color slide film, ASA 64 Processing not prepaid.
146	4-drawer chest	Wood-grained laminate on chipboard, hardboard back and drawer bottom; side guide for drawers, approximately 30 by 16 by 39.
147	Bentwood rocker	Cane seat and back, wood frame.
148	Director's chair	Hardwood frame, hemmed canvas seat and back.
149	Cube lamp	Approximately 10-in high, colored base, 6-in round globe.
150	Pole lamp	Extendable; 3 lights, 60 W; decorated swivel shades; ceiling to floor style.
Floor and wall coverings:		
151	Broadloom carpeting	Machine woven, 80 percent to 20 percent blend, 40 yd.
152	Ceramic tile	4¼ in by 4¼ in standard bathroom floor tile, white.
153	RYA style rug	Approximately 4 ft by 6 ft, 50 to 80 percent acrylic fiber.
Hardgoods, miscellaneous:		
154	Bag, attache-type	Women's leather, double handles, zipper top, stitched trim outside zippers.
155	Umbrella	Women's nylon, crooked handle.
156	Gold chain	16-in 14-kt gold fine link chain.
157	Shoulder tote bag	Approximately 15 by 14 by 7; vinyl on cotton; zip top; outside and inside pocket, shoulder strap.
158	Acoustic guitar	Full size, 6 string with case.
159	Microwave oven	Basic memory ability.
160	Cigarette case	Leather pouch with metal fastener.
161	Sun glasses	Polaroid lenses, plastic frames, simple design.
162	Cuticle scissors	¾ in, very sharp points with fine cutting blades.
163	Bar soap	Scented, bath size.
164	Cigarette lighter	Disposable butane lighter.
165	Travel alarm clock	Fold up, leather case, brass hinges.
166	Sewing machine	Freearm, touch and sew, wide variety of stitches.
167	Hair brush	Women's flat brush with wooden handle and natural bristles.
168	Chess set	Small traveling set with metal board and magnetic pieces in wood box.

SUBSTITUTIONS		
Chicago:		
601[1] (100)	Pipe wrench	8-in size, heavy duty.
Philadelphia:		
801[1] (38)	Girls' turtleneck pullover	Cotton-poly rib knit, long sleeve, reinforced cuffs and bottoms, solid color.
802[1] (128)	Porcelain frying pan	Teflon-like interior, 10-in size, unpainted silver exterior.
803[2] (99)	Crescent wrench	10-in size, all steel.
804[2] (112)	Boot roller skates	Vinyl boots with hollow steel wheels for outdoor use.
805[2] (168)	Backgammon set	12 by 6 in, folding wooden box, felt-lined, plastic pieces.
806[2] (99)	Electric sander	⅙ hp, 115 volts, double insulated, orbital and straight sanding motion, 8 by 4.5 sander, screw in sandpaper.
Atlanta:		
501[1] (38)	Girls' turtleneck pullover	Same specs as No. 801 in Philadelphia.
502[1] (43)	Overalls	Same as regular item No. 43, except no shirt.
503[1] (74)	Men's monk straps	Same as regular item No. 74 except leather bottoms.
504[1] (102)	Volleyball	Same as regular item No. 102, except leather-look.
505[2] (115)	Shower head	Wall mount, multiple spray, pulsating action shower head.
506[2] (119)	Can opener	Electric with removable cutter and magnetized lid holder, standard size.
507[2] (149)	Desk lamp	All metal with 18 in folding arm, 1 bulb, round shade.
Los Angeles:		
701[1] (1)	All-weather coat	Same as regular item No. 1 except 100-percent polyester.
702[1] (5)	Shirt	Same as regular item No. 5 except 65–35 poly-cotton.
703[1] (6)	Cardigan sweater	Same as regular item No. 6 except cable stitched and 100-percent acrylic.
704[1] (18)	Knit shirt	Same as regular item No. 18 except short sleeved.
705[1] (20)	Dress shirt	Same as regular item No. 20 except 100-percent cotton.
706[1] (28)	Sport coat	Same as regular item No. 28 except with inset pockets.
707[1] (34)	Shirt	Same as regular item No. 34 except 65–35 poly-cotton.
708[1] (36)	Jeans	Same as regular item No. 36 except has decorative stitching on pockets.
709[1] (37)	Sweater	Same as regular item No. 37 except has crew neck.
710[1] (35)	Dress slacks	Same as regular item No. 35 except it has pockets and doesn't have button trim.
711[1] (43)	Coveralls	Same as regular item No. 43 except made of broadcloth.
712[1] (45)	Pajamas	Same as regular item No. 45 except made of broadcloth.
713[1] (50)	Jeans	Same as regular item No. 50 except has patch pockets.
714[1] (50)	do	Same as regular item No. 50 except no reinforced knees.
715[2] (56)	Leather strap and buckle slip on.	Moc-toe, leather upper, other parts man-made, 1-in heel.
716[2] (60)	Canvas slippers	Unlined, man-made sole, closed heel and toe, wedge heel with jute trim.
717[2] (63)	Sandals	Wood spiked heel (2–3 in high), wood sole, 2–4 crossed straps, leather uppers.
718[1] (67)	Classic oxford	Same as regular item No. 67 except with man-made sole.
719[2] (71)	Moc-toe oxford	Suede uppers, other parts man-made, ridged bottoms, 3–4 eyelets.
720[2] (72)	Oxford casual	Leather uppers, 2–3 eyelets, man-made ridged bottoms, moc-toe.
721[2] (92)	Athletic-style suede shoes.	Contrast stitching, man-made bottoms with traction tread, padded collar, suede uppers.
722[1] (100)	Pipe wrench	Same as regular item No. 100 except 8 in. [illegible]
723[1] (104)	Canteen	Metal with cloth cover.
724[2] (110)	Jump rope	Same as regular item No. 110 except no nylon bearings.
725[1] (137)	Placemats	Same as regular item No. 137 except is quilted.
726[2] (151)	Area rug	100-percent wool pile, 5 ft by 9 ft, oriental design.
727[1] (144)	110 camera	Same except comes with flash and film.
728[2] (168)	Cribbage game	Hardwood board, continuous track.
729[2] (71)	Oxford casuals	Leather uppers, 2–3 eyelets, other parts man-made, ridged bottoms.

[1] Product observations merged with those of main product listed in parentheses for purposes of empirical analysis.
[2] Product observations excluded from empirical analysis.

The price quotations will be sought in each city during the period of one week by a staff of four people. Since the synchronization of the collection of these data by four people working more or less independently is very tricky, arrangements will be made for the members of each team to meet at the end of every day, and to tally what information has been obtained and what is still needed. This will also provide an opportunity to discuss problems that arise during the day, and to adjust the logistics of the operation as such instances indicate.

GUIDELINES FOR SELECTING ITEMS IN STORES

When you walk into a store, you first have to make a decision whether to introduce yourself to the store personnel, or to look for the particular items on your own. If it is a very large store, or if the sales people seem to be very busy, it may be best not to try to take up their time by introducing yourself, but rather to look for the items yourself. This is especially so if you are able to orient yourself so that you do not have much difficulty in locating the section where the particular items may be located.

If, however, you are not sure where to find items, or if you are approached by the salesperson, it may be best to introduce yourself at the very start, and possibly enlist their help in locating items. When you introduce yourself, explain that we are doing a price comparison study on behalf of the American Retail Federation, an organization of the major retailers in the country, and show them the letter of introduction that you will have with you.[2] Do not go into details on the purpose of the study, or what the Retail Federation may hope to obtain as a result of this study. Simply say that it is our task just to collect this price information in the best way that we can, that we are not interested in price comparisons among individual stores, but rather in comparing prices for imported versus domestic versions of the same product, and that we would appreciate their help in obtaining the necessary price information.

In working with the store personnel, feel free to show them the list of products for which you are looking for price information for that type of store. Do not, however, under any circumstances, let them see sheets containing price information that you may have collected from other stores. Such information is to be treated in absolute confidence, and is not to be shown to any other stores that you visit.

In discussing the availability of different items with the personnel of the store, it is a good idea to make notes on what they say with regard to whether particular items that are not available may not be available in that city at all, or only may not be available in the particular store. It would be especially useful if you record item specifications for products that store personnel say are available, and which they suggest might substitute for products that they say are not available. Such information is especially useful in making substitutions in the later part of the week for items that do not seem to be available at all in that city. Please keep in mind, however, that any such items must be available both in imported and domestic versions.

You may have to exercise a considerable amount of judgment in deciding when a particular item in the store corresponds with the item on your list. The correspondence will not always be exact in terms of the item specifications, but the difference in the specifications may be so little as to be of no practical consequence to the average consumer. This is in fact the criterion that you should use in deciding whether to record the price of an item or not. In other words, if the item in the store differs from your specifications in a way as to be of no practical consequence in terms of the serviceability or the attractiveness of the item to the consumer, it may be assumed that it meets the written specifications.

To be sure, cases of doubt are bound to arise. In such instances, when you record the price, also be sure to record what is the nature of the difference between the specification of the item in the store, and the specification on your record sheet. Whether or not such a difference is large enough to warrant excluding the item can be discussed at the meeting of the teams that evening, and this information can also serve as a basis for deciding in the office at a later time on the reasonableness of your decision.

When you visit a particular store, be sure to try to obtain price quotations for as many different items as are listed on your record sheet. For this purpose, the imported and the domestic versions of a particular product are different items, and price quotations for each may be obtained in the same store if both the imported and the domestic versions of that item are carried by that store. Do not, however, record more than one price for a particular item. For example, if you find two price quotations for a domestic man's shirt corresponding to the specifications on the form, record only one of those prices. The price that should be recorded is that of the more heavily sold item (if that informtion is available), or otherwise the lower price.

In choosing the price for an item, be sure to choose the price for the "standard" item of that type. In the case of a man's shirt, for example, do not record the price of the "extra large" model, or of a model that is atypical in terms of color scheme or style.

---

[2] A copy of this letter is attached.

The following additional guidelines should be kept in mind while selecting items for pricing:

1. Do not record sale prices. If an item you select appears to be on sale find the original price.
2. Do not select left-over summer stock items.
3. Avoid selecting items that are intended to be a part of a set, (for example, the vest of a 3-piece suit); try to find separates.
4. Avoid verbal price quotes from sales clerks—get the prices from printed tags or stickers.

FORMS

In connection with the collection and recording of price information, you will be using three forms.

Form A contains the specifications for the items for which you will be seeking price information. It is organized by major category of goods so that you need make use of only those sheets for the product categories with which you are working. This form is not confidential, and you may feel free to show it to any store personnel from whom you may seek assistance.

The form lists by product category each of the items on which we will be seeking price information. Within each category, each item has a number and a descriptive name followed by the information on the specifications for that item. These specifications are those which you will seek to match in the stores. It is perhaps needless to say that virtually all of the items will have other characteristics as well (such as different colors and patterns for clothes), but these other specifications are not relevant for the present purposes.

Form B is the Item Record Form.[*] There will be at least one such form for every store that you visit. The name and address of the store are indicated in the upper left-hand corner. The store type is indicated in the upper right-hand corner. In the body of the form, each pair of rows represents a different item; one row is for the domestic price, and another row for the price of the item, if imported. In a particular store, you will try to obtain as many of these prices as you can, in accordance with the criteria outlined in Section ______. When you record a price for a particular item, be sure also to record all the other information in the other columns of that row, namely, if the item was on sale (and if so, the original price), if the item was in the bargain section (if it is a department store), and the country of origin, if the item is imported. The country of origin should be written in beside the other category in the column labeled *origin*. Some of these data may not be ascertainable, such as country of origin, or original price, but before recording "n.a." make an effort to obtain this information from store personnel.

Form C is a tally form that will be used by the team as a group, and by the team leader to summarize every evening how much price information has been obtained on each item. It is essential that this form be brought up to date at every meeting so that we can see as the work progresses, for which items we already have enough information, and for which items more information and more price quotations are needed.

---

[*] The format of this data-collection sheet changed somewhat from the initial version described here. The final version is attached.

STATEMENT OF THE ELECTRONIC INDUSTRIES ASSOCIATION

The Electronic Industries Association (EIA) represents 285 member companies, all of them manufacturers in the USA of electronic products. They make and sell component parts, equipment, and systems for communications, governmental, industrial, and consumer end-uses.

EIA represents big and small business. Some members are specialized firms with a single product line, selling to domestic customers; their primary concern in international trade is import penetration. Other members are medium-sized companies with broader product lines, selling here and abroad. From the trade negotiations, their expectation is a marked lowering of the barriers which other nations have erected and maintained against our electronics exports.

Among EIA's members are also U.S.-based multinational corporations with plants here and abroad, with highly diversified product lines extending beyond electronics into the sectors of business machines, instrumentation, aerospace, electrical equipment, non-electrical machinery, chemicals, and plastics. They look forward to a better international trading system, one in which the major trading nations are accorded "equivalent competitive access" into each other's marketplaces.

EIA's membership also includes the American manufacturing subsidiaries of a few foreign-based multinationals. Such plants employ U.S. citizens, pay American wages and prices, contribute municipal, state, and federal taxes, and vie for a competitive place in the U.S. market.

So, the views to be presented in this statement are not at all parochial. In STR's perspective, American manufacturing industry is composed of 26 Sectors; the electronic industries are actively represented in five of the Advisory Committees:

- ISAC–16 on Computers and Business Machines;
- ISAC–19 on Consumer Electronics and Household Appliances;
- ISAC–20 on Instrumentation;
- ISAC–22 on Telecommunications and Non-Consumer Electronics;
- ISAC–24 on Aerospace.

The 1978 U.S. factory sales of electronic producers were over $55 billion. Nearly 25%, $13.3 billion, was exported to customers outside of the USA. Almost 10% of all U.S. exportation was in electronic products, as such. If the electronic content in capital equipment such as airplanes (in which avionics account for 20% of the cost) or automated machine tools were to be included, the figures would be significantly higher.

Electronic manufacturing directly employs 1.35 million Americans. Of those jobs, at east 260,000 are tied to exports.

At the same time, imports of electronic products reached $10.7 billion. It is evident that some of our industries are facing major competition from foreign sources. The U.S. electronic industries are at the center of increasing international competition. Some of our products give high performance for reasonable prices and are among this economy's most exportable. Other product lines . . . namely TV, CB radios, and simpler component parts . . . have become "import sensitive." Nevertheless, in the balance of U.S. trade, the electronic industries generate more exports than imports. There is a $2.6 billion electronics trade surplus.

PERSPECTIVES AND GENERAL IMPLEMENTING CONCEPTS

In 1978 this country's two-way international trade in merchandise amounted to $317.8 billion. This amount substantially exceeds the total national defense budget; it is about double the total expenditures of the Department of Health, Education and Welfare. It is approximately four times the totality of American agricultural production and larger than all national expenditures on energy. That the mechandise trade balance is also in huge and growing deficit—exceeding $34 billion in 1978—obviously contributes significantly to the declining

42-978—1979——19

international value of the U.S. dollar, to domestic inflation and to persistent unemployment.

One would expect that both the relative size and importance of the U.S. merchandise trade as part of the national economy and the enormity of our trade deficits would induce a systematic and continuing attention on the part of the U.S. Government. The opposite, however, is the case. While our present and continuing needs in trade policy and its implementation are consistency and activism, the fact has been one of fragmentation and contradiction in policy formulation and the conduct of administrative responsibilities. These deficiencies on the part of the Government have been at least as great a cause of this nation's trade problems and difficulties as the imperfect macroeconomic and microeconomic factors which conventional analysis so often adduces as the reasons for our troubles.

We see the MTN Codes as affording a major opportunity for the United States to work itself out of those economic problems that are trade-induced. To be sure, none of these Codes is self-executing or self-administering. Moreover, even as most of them at the date of this submittal remain incomplete, it is apparent that, being the result of give-and-take bargaining, they will not provide perfection on earth. Yet, they begin to provide for international rules governing trade and their enforcement where neither has existed heretofore.

In other provisions, they improve considerably upon the present international body of law and good practice which has not been able to cope with trade imbalances and unfairness.

In addition to their possibilities for specificity in application, what EIA finds noteworthy in the sweep of the Codes is their interrelationship. Thus, for example, what may not be reachable as unfairness under the Government Procurement Code might well be pursued as partial remedy under the "second track" of the Subsidies Code. Again, the disciplines imposed by the Code on Import Licensing suggest that the regularized procedures of the Safeguards Code might be put to growing international usage. Furthermore, we note the many areas of commonality that characterize all the Codes as well as the Framework Agreements: in consultation, conciliation and dispute settlement mechanisms; in reporting requirements; in unspecific but none the less variable preferential treatment of the developing countries; in national options for the granting of conditional most-favored-nation treatment; and so forth.

In summary, EIA believes that, from a negotiating standpoint, the Codes—as Codes—are for the most part praiseworthy and that much is owed to the determination and persistence of the U.S. negotiators.

Given these interrelationships and commonlities, EIA deplores the seeming tendency in both the Executive Branch and Congress to treat implementation of the Codes as if each Code were in isolation from every other Code. We urge the Subcommittee to resist this approach, for it is our growing fear that such a development in legislation will continue to leave the United States with an incoherent trade policy and inept trade administration.

Thus, the crux of our concerns over the MTN agreements is *not* the Codes themselves. It is, instead, how the United States chooses to implement them. The basis for these concerns lies not only in the inadequency of the present implementing proposals, but also that as a country we are in danger of repeating past errors—precisely as we did after the Kennedy Round.

Then, the United States took as sufficient the work of the negotiators, failing utterly to realize that liberalized trade conditions in an increasingly competitive world would result in a rush to the improved international markets and their enlarged opportunities by export-conscious governments and firms alike. The U.S. cut back its export assistance programs while other countries expanded theirs. Our one new program, the DISC, while certainly positive was so structured and then amended that its effectiveness was blunted: the DISC provisions were predicated for success on a substantial build-up of interest-free, tax-deferred resources; but this build-up was unreasonably expected to occur during a period when other countries were pre-empting market opportunities through utilization of much larger subsidization, trade distortion and export incentive schemes.

Equally bad, by rejecting any genuine domestic implementation of the GATT Anti-dumping Code, the U.S. paved the way to major disruptions and pre-emptions of the domestic market by aggressive foreign imports. Television sets provide a glaring example. Though found to be dumped in 1971, to the present date the U.S. Treasury Department has proved itself incapable or unwilling to administer the U.S. statute because it neglected to establish and collect an appropriate anti-dumping duty even as millions of dumped TV sets entered the country. Adoption in 1968 of pertinent parts of the GATT Code would have made this dispiriting process impossible.

In the late '60s, an "opportunity window" had opened, for us as well as for our major trading partners. They acted. We did not. That window stays open just so long, then slams shut. It became too late for U.S. interests to recoup. One vestige of our failure to implement the Kennedy Round is, now, our chronic Trade Deficit: $25 billion in '77, $30 billion in '78. What for '79?

That is why the electronic industries call this Subcommittee's attention to the need for diligent and aggressive implementing of the Tokyo Round.

Government should take "Affirmative Action," strengthening its organization as well as its statutes to do so. It could purposefully enable industry and labor to grasp these opportunities, upgrading exports as a matter of sustained national priority . . . certainly until the energy crisis is contained.

Government could enable the private sector to grasp these opportunities as much by critically reviewing and, then, zealously reducing export DISincentives, imposed by present laws and regulations on our potential export transactions, as by new measures toward expanding exportation. An interagency Task Force has within the last two months identified 11 such disincentives for scrutiny by the Executive Branch. The electronic industries agree that these, some statutory, others casting exports as an instrument of foreign policy, constitute real barriers against the materialization of purchase orders from abroad.

Remember that American companies must first have met foreign competition in the world market and won the order, before applying for export license or for export financing to deliver the goods. It is at this point that one or another Government-imposed disincentive often prevents consummation.

This is particularly true for many electronic products which, together with those of the USA's other high-technology industries, are among this nation's most exportable.

We recommend "Affirmative Action" because STR is presently circulating to ISACs, LSACs, and ATACs a least-common-denominator proposal for implementing the MTN. It makes the fewest possible changes; it gingerly avoids rocking the boat. For example, under the Subsidies Code, STR proposes change in ONLY the Countervailing Duty Law and, as to making the Code affect the conduct of ours and other nations, puts a pinch of authority in the Treasury Department, a dash of responsibility in STR, and a twist of accountability in inter-agency committees. In this context, half-a-loaf is *not* better than none.

Still within the context of "Affirmative Action," we also recommend that Government determine, *this time from the standpoint of exports as a national priority,* which of the DISincentives are actually accomplishing their intended purpose (national security, human rights, environmental, etc.) and whether the intended purpose transcends export's importance. Then, with those criteria in mind, Government should relax the disincentives.

"Affirmative Action" is needed in order to overcome the policies and the approach to them which brought us a $30 billion trade deficit.

Let us consider other specifics in the proposed agreements.

CONDITIONAL MFN IN THE CODES

"Most Favored Nation" treatment has, until now, been largely a function of the Tariff Schedules. All nations except the most adversary or least developed pay the MFN duty rate. Since Customs provides revenue, the granting of MFN treatment has been the prerogative of Congress.

But the Tokyo Round has developed Codes of Conduct toward remedying a host of NON-tariff barriers. Understandably, since these tread untried ground, some nations will sign a given Code and others will not. Nor will the same nations sign all of the Codes. Even among major trading partners of the free world, there will be non-signatories.

It is in this context that "Conditional MFN" acquires its meaning. A signatory to a given Code need not accord the Code's benefits to all GATT members, nor even to all nations enjoying its MFN tariff status. A signatory need only accord those benefits to the other signatories.

Further, a signatory nation changing its laws to conform with an emergent Code need not amend them with respect to non-signatory nations.

If the USA signs the Government Procurement Practices Code, it would be necessary to change the Buy America Act and the Small Business Set-Aside. But it would not be necessary to amend them with respect to purchases from non-signatory nations, nor to purchases beneath the Code's "Threshold" of $180,000.

If we become a signatory to the Subsidies Code, it would not be necessary to amend the Countervailing Duty Law altogether. There is, for example, no reason why we should invoke the "Injury Test" before countervailing against non-signatory nations.

Reciprocity is inherent in the Codes as they have evolved. Signatories reciprocate the Codes' benefits. Non-signatories have made a purposeful decision not to lower their non-tariff barriers against imports. So, why should the USA accord the Codes' benefits to non-signatories . . . even if Congress had accorded them MFN status in the Tariff Schedules?

PRECEPTS OF ADMINISTRATIVE RESPONSIBILITY

The strength and effectiveness of a nation's international political power relate directly to its economic strength. That economic strength is a function of a sound and stable currency, high industrial productivity, low unemployment, and a low rate of inflation. Although economic theorists in the classic tradition consider government as a disturbing influence upon the self-regulating private economy, the fact that government does impose and will continue to impose its influence requires the private sector to make an attempt to contribute to the formulation of government policy and to ameliorate negative factors. One such attempt is the call for an aggressive U.S. trade policy which fosters exports and allows them to compete effectively in world markets.

A strong and positive trade policy would contribute significantly to the requirements for a sound, healthy economy. Increased exports would boost economic productivity and create much-needed resources for capital investment in equipment and facilities to expand current productivity and capacity. Increased productivity and its concomitant lower unemployment generates more revenue to the Treasury from both the corporate and personal sides, and decreases Federal credit demands. As Federal borrowing is a major factor driving inflation, its reduction would lower the cost of money and strengthen the U.S. dollar, thereby, lowering the cost of essential imports (another significant factor in rising inflation). While a strong trade policy is obviously not the total answer to our economic problems, it is a most important factor.

To develop and administer an aggressive trade policy, however, calls for centralization of the currently highly fragmented administration of U.S. trade policy. Such centralization is an extension of the logic behind the sunset and regulatory reform proposals considered by the Congress over the last several years.

The logic behind sunset proposals maintains that all programs in a given area of responsibility be looked at simultaneously, not merely with an eye to cut back and reduce, but to identify duplication, obsolesence, ineffectiveness and voids in policy administration. The concept of Congressional sunset review is a highly laudable one. It recognizes the need for a comprehensive review of policy administration. But such review, bringing together all agencies assigned some facet of a larger policy, will be recreating the wheel at every 5–10 year cycle (depending on the specific proposal) if those agencies are not unified in the administration of that policy in the interim. Why bring them together once every several years only to disperse them to the four corners of the bureaucracy after legislative corrective surgery? Thus, centralization of the 57 agencies administering U.S. trade policy would not only facilitate sunset review but more full carry out the goal of that periodic review by providing ongoing continuity in policy and commonality in practice.

The various regulatory reform proposals have as their common purpose the development of a coherent body of Federal regulation which escapes the charge of being excessively burdensome, incompatible, and a disincentive to productivity. Again, the centralization of the administration of U.S. trade policy would support this purpose. Given the multi-functional nature and characteristics of transactions in international trade, the interests of coherency and efficiency are best served by an optimum of centralization in administration. Current interdepartmental disputes stemming from conflicting or correlative assignment of administrative responsibility would be obviated.

Thus, rather than merely adding another layer of Federal regulation, the centralization of administration of trade policy at Cabinet level has the potential to be far more efficient and productive than the current system, and is a natural response to efforts to control and rationalize the Federal bureaucracy and its regulation.

Centralization would work to eliminate duplication and obsolete programs, foster regulations that are not only compatible but supportive of one another and overall U.S. policy, and clearly identify gaps in current policy. Centralization will make it possible to formulate a trade policy which will measurably benefit the U.S. economy.

The cost of such centralization should be negligible. It would be accomplished through consolidation of existing agencies and might even result in a net savings as duplication is eliminated. This is not to say that an increase in Federal expenditures to initiate and carry out a strong trade policy will not be needed. Increased Federal investment in U.S. trade is a necessity if industry is to take full advantage of the multi-lateral trade agreements currently being negotiated. If strong export expansion programs are not forthcoming upon Congressional approval of the MTN, the U.S. could be in a worse trade position than before because of the liberalization of world trade made possible by the agreements.

ORGANIZATIONAL ALTERNATIVES

In contrast to the precepts stated above—which are no more than principles of good administrative practice—stands the present organizational structure of the Executive Branch for international trade. Here, some 57 agencies compete for the choicest turf and available funding but leave untended the truly difficult problems of policy and administration.

Inevitably, in such excessive division of labor, administrative responsibility is fragmented, innovation is stifled, and major elements in the formulation of policy or its execution are left undone. The basis for precedence between agencies is mainly ill-defined and policy authority is focussed on esoterics and the arcane. In short, the U.S. system for trade administration is mainfestly inadequate to the contemporary economic world and, on its record, pathetically insufficient to the enhancement of U.S. interests. Yet, the proposals now being developed within the Executive Branch to implement the MTN Codes do little or nothing to correct these inadequacies. On the contrary, they load additional responsibilities on the same weak administrative chain.

It appears to EIA, therefore, that the prospect offered by STR's proposals is one where the opportunities for the United States in the post-MTN world will be dissipated by insufficient, minimal implementation and a continued fragmenting of administrative responsibilities and actions. Accordingly, as a key element and first order of implementation business, we see a organization of the trade function of the Federal Government to be a vital necessity. Alternatively:

> Either . . . virtually all trade administration functions affecting non-agricultural goods should be placed in a new Cabinet Department endowed by statute with focal responsibility, authority and accountability for U.S. trade and off-shore investment.
>
> Or . . . such assignment of authorities should be given to a single existing Cabinet-level Department whose primary and specific responsibility and accountability would then become the administration of U.S. trade.

EIA would be pleased to participate in further discussions on specific bills or proposals for rationalizing the administration of U.S. trade.

Before concluding, we wish to make one further point.

In the experience of EIA's members, the advisory process established under Section 135 of the Trade Act of 1974 has worked well. Especially at the industry sector level, it has provided a means of continuing dialogue with the Special Trade Representative and his negotiators that would otherwise have been impossible. The approach, we believe, has contributed much to the generally satisfactory shape of the Codes—provided, of course, that the latter are suitably implemented. Accordingly, in order to provide for a continuation of this useful function, EIA strongly recommends that provisions of the implementing legislation accomplish the following:

> Establish permanent ISACs and LSACs along the present structural lines—that is, by industry groupings rather than in accordance with Code coverage. These committees should have assured ability to provide advice on all policy, program and negotiating activities.

For advice on purely technical matters—such as the content of specific product standards or deductive methods in customs valuation—these permanent committees should be consulted on the formation of special panels, as and when necessary, and the nomination of individuals known to possess specific expertise in the particular problem area.

In establishing permanent advisory committees, several improvements over the present process are desirable. For example, the committees should have direct access to interagency committees of the Executive Branch. When committee advice is sought, the advisors should be given more current and more complete information on a timelier basis. And, staffing of the committees by the lead administrative agency should be more consistent.

EXPORT EXPANSION PROGRAMS

There is considerable economic need and competitive urgency for Export Expansion Programs. To obtain adequate funding for them is imperative as well. EIA submitted its recommendations when the Executive Branch was developing the President's National Export Policy last year. These are attached to this submittal for your ready review.

THE VIEWS OF THE ELECTRONIC INDUSTRIES ASSOCIATION ON THE DEVELOPMENT OF A NATIONAL EXPORT POLICY, ADDRESSED TO THE INTER-AGENCY EXPORT POLICY TASK FORCE, JUNE 9, 1978

We believe that there are no short cuts to solving the U.S. balance of trade problem, but recognition of the problem is certainly a first step. Required is an affirmative, flexible Export Policy that will help all sectors of the economy, and reflects a change of attitude on the part of many of those whose efforts and participation are essential to such a policy's success. The continuance of our free market economy depends on this nation's ability to export and compete in the world markets.

Toward this end, we urge the President to declare that exports shall be one of our national priorities. This declaration should be endorsed by the Congress and followed by appropriate Executive Orders and new legislation where required. Such actions would encourage greater U.S. competition in world markets, should significantly reduce governmental interference in private sector export efforts, and should bring about increased cooperation and encouragement from government agencies. One of the large benefits accruing from these actions by the President and Congress would be a relaxation of the current adversary relationship now existing between government and business.

A National Export Policy should comprehend a targeted program to assist those producing sectors that have demonstrated greater export potential than others. Certain other products or commodities cannot realistically be considered as having true export potential because of price, tariffs, non-tariff barriers, or standing regional and international agreements. The export development program under the Policy should provide for the conservation and effective deployment of Federal financial resources, directing these toward those sectors capable of export expansion. Similarly, it should be a continuing policy imperative to bring to the attention of the President's Special Trade Representative those opportunities where aggressive representations to our trading partners beyond the current Multilateral Trade Negotiations would be most fruitful. While encouraging the expansion of direct exports by medium-sized and smaller businesses, policy measures should grant fuller recognition to the fact that the products of such businesses are incorporated as subassemblies and components in the exports of larger American companies.

We recommend that the National Export Policy assure the purposeful simplification of export procedures and give special emphasis to the need of American companies for timely response in the governmental agency decisions on which export transactions can or cannot be licensed. In today's practice and regulation, decision delays lose export sales.

Concomitantly, even as socio-economic considerations such as human rights and environmental protection cannot be ignored, a regulatory balance which reflects the high priority placed upon exportation must be maintained. American trade with and commercial presence in a developing country can and does raise its standard of living and enhances the causes of human rights and democracy.

Maintaining the favorable balance of electronics trade, currently in excess of $2.5 billion, is becoming increasingly difficult. Both foreign and domestic actions have eroded the ability of U.S. companies to match zealous overseas competitors on an equal basis. The domestic erosion of U.S. competitiveness is discussed below. The foreign actions to which we refer have been described to the Office of the Special Trade Representative directly and are documented in the proceedings of the Industry Sector Advisory Committees. They have been aired before the International Trade Commission. The details are well-known and need not be repeated here.

Various U.S. governmental export promotion programs—such as the dissemination of commercial intelligence, overseas trade centers, participation in trade fairs, assistance in locating customers or distributors, and the like—have a certain usefulness to small businesses and exporting companies new to a particular foreign market. It is, we feel, only constructive criticism to suggest that these can be improved in regard to their timeliness and marketplace relevance. But, at their best, those promotional programs are directed essentially toward one-time or first-time sales and introductions to the marketplace. They do not and cannot provide the operational framework that is essential to export growth: the continuing organizational presence in a foreign market that provides customer service, applications engineering, sales administration, day-to-day solicitation, and the myriad interface requirements between a U.S. based manufacturer and an overseas buyer.

First-time sales seldom, if ever, generate sufficient profitability to warrant establishment by a U.S.-based company of a full-scale export marketing operation, either at home or abroad. Similarly, the narrow product-line sales base so typical to smaller and medium-sized companies usually cannot sustain the investment and continuing costs necessary to maintaining properly-staffed overseas offices. As a consequence, such would-be exporters become dependent for continuing marketing presence and services upon traditional import-export houses or the initiative of foreign distributors, both of which are less than satisfactory channels to the market where product success requires technical selling and/or wide distribution.

In EIA's view, the principal improvements to export promotion which a National Export Policy could provide lie in strengthening the ability of U.S. exporters to remain consistently in foreign markets where their products have won first-sale acceptance. Specific implementation could involve the following:

a. Relaxation on the strictures against U.S.-owned trading companies engaging in certain trade-related banking operations as well as strictures against the joint ownership of such companies by firms which normally compete in the U.S. domestic market.

b. Financial incentives—whether by tax credits or low-interest, long-term governmental loans—for U.S.-owned trading companies to pursue foreign market development activities.

c. Improved U.S. Government export credit programs covering smaller-valued transactions, short term financing, and lines of credit to regular export customers.

d. Relaxation of the strictures on U.S.-owned foreign subsidiaries in representing the products of other U.S. exporters, whether or not in competitive lines of business.

It is of parallel importance that such programs be available on a timely or expeditious basis and, equally, that such availability be over the long term rather than on the stop-go, year-to-year approach that has so often typified the incentives of U.S. expansionary policy. Exportation is not, in EIA's experience and that of its member companies, an annualized, aggregative process that adjusts nicely to macroeconomic tinkering or "fine-tuning." Nor is exportation, for most enterprisers, an act of short-range opportunism. On the contrary, it is a large collection of discrete and disparate transactions, the large majority of which are possible only where consistency of rule obtains in the international order. In short, exportation comprehends a large series of microeconomic processes. Its best environment for expansion is stability and incentives to growth, both in rule and in economic policy.

A National Export Policy should revise and begin reversal of the stringent measures imposed by Government, during the last eighteen months, and which today seriously aggravate the already burdensome problems of U.S. exporters. A recent article in Business Week (April 10, 1978), enumerated eleven such obstacles, which are attached to this paper as an Appendix. No Export Policy that seeks expansion can fail to review these obstacles carefully in light of their inconsistencies and suppressive effects.

Other recent domestic policies—or their absence—that compound the deleterious effect on exports include:

The failure to recognize the need for an Export Facilitation counsel or advisor, in addition to the Special Trade Representative, in the Executive Office of the President;

The failure of the Executive Branch to utilize inputs from the private sector organization created for this purpose, namely the President's Export Council;

The embargo-minded implementation of the Export Administration Act;

Continued attempts to abolish DISC, deferral of taxes on unrepatriated foreign income, and other tax provisions which act as export incentives;

OSHA and EPA regulations, which add cost burdens to manufacturing in the U.S., but not abroad;

Capricious imposition of sanctions without consistent rule on grounds of violating human rights against some countries while tacitly condoning similar violations elsewhere;

Cutbacks of foreign military sales and direct commercial sales under the unilateral arms reduction program;

Uncertainty of the future of OPIC and the restrictions made on its operating authority; and

Continued limitations on EXIM Bank's charter at a time when it should be strengthened.

It is our confident belief that, afforded competitive parity, the U.S. electronic industries—as well as many other American businesses—can hold their own in the international marketplace. But given the above listing of the restraints domestically imposed upon U.S. manufacturing industry, it is hardly surprising that, in real terms, this nation's overall export performance has been stagnating. Recovery, we believe, cannot be casually entrusted to that time when the world's economies might somehow once again regain their impetus toward growth. If and when world-wide demand improves, in our opinion it cannot be presumed that there will ensue an automatic demand for more U.S. exports. Rather, the restraints discussed here have become so generic that it may be doubted how readily many American industries will be able to supply what increased demand develops. Other countries, less constrained, will have preempted the growth increment.

In order to avoid such preemption, both sound policy and economic necessity argue powerfully for a reduction now in the restraints that will surely harm this country in the future. Toward that end, if it is not to be expected that America's self-imposed restraints on its own exports might wholly disappear, it should be nevertheless possible that they be harmonized into rather than contradict and make unworkable a genuinely expansionary export policy. Similarly, we urge that a thorough review of the antitrust laws be undertaken to ascertain what reasonable exceptions can be developed which will assist U.S. firms to compete overseas while still maintaining the spirit of competitiveness called for under these laws.

In the longer term, any policy effort to sustain U.S. exports must focus upon reversing the slow-down in American research and development (R&D). U.S. competitiveness in world markets has traditionally hinged as much on superiority and quality in high-technology products as it has on price offerings. With so many other nations rapidly closing this one-time technological gap, the sharpening of international competition lays increasing challenge upon this country to regain something of its ability to bring about innovation that is both rapid and efficiently produced and marketed.

The need is obvious: U.S. companies must once again be encouraged to direct their genius toward methodically, systematically applying R&D to the continuing creation and improvement of their product lines and methods. But if need is obvious, the solution is not. A major limiting factor to R&D, today, is the availability of funds to pay for it, to invest in its fruits, and to realize sufficient profits that keep the cycle operating.

That the decline in Federal funding has contributed to our current shortage in R&D is one dimension of the problem, but only one. Clearly, the present tax regulations governing the deductibility and/or the depreciation of such effort by the private sector are insufficient incentives.

In our judgment, therefore, a new national policy on R&D can be successful only if it supplies a healthy stimulus to substantially increased investment in the process. This means, in effect, a policy that encourages a redirection of resources and savings from current channels of conventional application to perceptible channels of discovery and innovation. Such a policy may or may not involve additional Federal expenditures; it must certainly contain the ingredients and incentives which bring forth commitments and a flow of funds from the private sector.

In sum, a National Policy that places high priority on exports and international trade means a policy that is not subsidiary or subservient to other national goals. Its purposes should be its own, not those of foreign political relations or domestic taxation. Its implementation through programs and administration should be consistent, not contradictory. Its direction should be steady and continuing, not sporadic or perpetually shifting under the hands and whims of ever-changing administrators and regulators. In short, the policy should be one of firm commitment, appropriately served, to objectives that are reasonable and possible. That being the case, this nation will make such a policy a success.

APPENDIX.—EXPORT OBSTACLES ENUMERATED IN BUSINESS WEEK OF APR. 10, 1978

Obstacles	How they work	The outlook
Anti-Arab boycott rules	U.S. exporters must forgo Arab contracts that bar Israeli-made goods.	Stiff additional curbs take effect in June.
Reduction of income tax advantage for Americans abroad.	Raises cost of keeping U.S. sales and service personnel overseas.	Congress is likely to restore some exemptions.
Trade Act of 1974	Bars Ex-Im credit to most Communist countries.	Congress is expected to restore credits to Hungary.
Foreign Corrupt Practices Act of 1977.	Imposes jail terms and fines for overseas payoffs by U.S. companies.	No change expected. European and Japanese competitors unaffected.
Antitrust laws	Prevent U.S. companies from bidding jointly on major foreign projects.	No change expected.
Restrictions on sale and financing of nuclear plants.	Designed to halt the spread of nuclear weapons.	No change expected. Europeans are replacing U.S. suppliers.
Human rights legislation	Ex-Im denies credits to rights violators. Loans withheld from South Africa, Uruguay, Chile.	No change expected. Not imposed by other trading nations.
Proposed environmental restrictions.	Ex-Im would be required to assess impact of U.S. exports on foreign countries.	Pending in Congress, administration, and courts. Procedures could be long and costly.
U.S. trade embargoes	Ban exports to Cuba, Vietnam, Rhodesia, other countries.	Talks on easing ties with Havana slowed by Cuban intervention in Africa.
Strategic controls	Restrict exports with potential military uses to Communist bloc.	U.S. enforces more strictly than allies. Curbs under review.
Proposal to end U.S. tax deferral on multinationals' operations abroad.	Would mainly affect U.S. plants and export in sales subsidiaries in developing countries.	No change expected.

BIBLIOGRAPHY

TECHNOLOGY

Norris, William C. *Technological Cooperation For Survival.* Control Data Corporation: February, 1977. Address given to the Institution of Electrical Engineers in London, England on February 25, 1977.

Norris, William C. *Technology and Full Employment.* Control Data Corporation: November, 1977. Address given to the Minnesota Full Employment Action Council in Minneapolis, Minnesota, on September 6, 1977.

"Views on Technology Transfer in the East-West Trade Context," statement submitted by the Electronic Industries Association Board of Governors to the Deputy Asst. Secretary for Trade Regulation, U.S. Dept. of Commerce on November 1, 1977.

"The Transfer of Critical Technologies," letter from Electronic Industries Association International Business Council to the Honorable Stanley J. Marcuss, U.S. Department of Commerce on March 29, 1978.

EXPORT POLICY

"Legislation to Promote U.S. Agricultural Exports." Address given to the Subcommittee on Foreign Agricultural Policy, Senate Committee on Agriculture, Nutrition and Forestry on April 28, 1978, U.S. Chamber of Commerce.

Norris, William C. *A Policy for Export of Products & Technology.* Control Data Corporation: September, 1977. Address given to the American Astronautical Society in Washington, D.C. on April 1, 1977.

"U.S. Programs and Facilities Designed to Increase and Facilitate Exports."

Address given to the Subcommittee on International Finance, Senate Banking Committee on April 5, 1978, U.S. Chamber of Commerce.
"Foreign Governments' Policies in Support of Exports." Testimony given by the Electronics Industries Association International Business Council to the Subcommittee on International Finance, Senate Committee on Banking on March 9, 1978.
"Floating Exchange Rates and U.S. Export Policy." Statement given by Electronic Industries Association International Business Council to the Subcommittee on International Finance, Senate Committee on Banking on February 6, 1978.
"Export Administration Act Extension." Address given to the House International Relations Committee on March 9, 1977, U.S. Chamber of Commerce.
"Export Administration Act Extension." Address given to the Subcommittee on International Finance, Senate Banking Committee on February 22, 1977, U.S. Chamber of Commerce.
Statement to Amend Senate Bills S. 69 and S. 92 on the Export Administration Act given by the Machinery and Allied Products Institute to the Subcommittee on International Finance, Senate Committee on Banking, Housing and Urban Affairs on February 21, 1977.

TRADE AND EXPORT PERFORMANCE

"The Trade Deficit." Address given to the Subcommittee on International Economics, Joint Economic Committee on October 31, 1977, U.S. Chamber of Commerce.
Bush, George. *Speech to Center for International Business.* Address given in Houston, Texas, on April 12, 1978.
Friedman, Irving S. "International Trade." Address given at the Fifth Annual International Trade Conference of the Southwest, the Center for International Business, in Houston, Texas, on April 12, 1978.
"Trade Deficit." Statement given by Electronic Industries Association International Business Committee to the Subcommittee on Trade, House Committee on Ways and Means on November 7, 1977.
Statement and testimony given on U.S. export performance and floating exchange rates before the Senate Committee on Banking, Housing and Urban Affairs on February 6, 1978. National Association of Manufacturers.
National Association of Manufacturers testimony before the House Subcommittee on International Trade, Investment & Monetary Policy on March 15, 1978.
National Association of Manufacturers letter to Rep. Charles A. Vanik in Support of U.S.-Hungary Trade Agreement on April 21, 1978.
"Need for a Consistent, Future-Oriented Foreign Trade and Investment Policy." A Report to the President by the President's Export Council, December 1976.
National Association of Manufacturers letter to Senator Richard Stone re. Cuban Trade (H.R. 6689) on June 9, 1977.
"Competitiveness of U.S. Exports as Measured by Relative Exchange Rate Changes 1960–1976." NAM "Special Report," March 22, 1977.
Fox, Lawrence A. and Stanley Katz. "Dollar Devaluation, Floating Exchange Rates and U.S. Exports." *Business Economics*, January 1978, pp. 14–24.
National Association of Manufacturers Export Credit Survey Report. NAM "Special Report," December 28, 1977.
"Developments in U.S. Trade Performance with Particular Reference to Manufactured Goods." NAM "Special Report," May 1978.
Indicators of International Economic Performance: Trade Indicators. National Association of Manufacturers, September 1977.
Indicators of International Economic Performance: General. National Association of Manufacturers, March 1977 and March 1978.
National Association of Manufacturers letter to Senator Abraham Ribicoff, in support of U.S.-Hungary Trade Agreement on May 14, 1978.
U.S. Trade Performance, 1970–77. National Association of Manufacturers "Special Report," May 1978.

EXPORT-IMPORT BANK

"Extending and Amending the Export-Import Bank Act." Statement given by the Electronic Industries Association International Business Council to the Subcommittee on International Finance, Senate Committee on Banking on March 21, 1978.

Holliday, George and John P. Hardt. *Expqrt-Import Bank*, Issue Brief Number IB74108. Library of Congress: Washington, D.C., October 20, 1977.
"Export-Import Bank Operating Authority (S. 2520)." Address given to the Subcommittee on International Finance, Senate Banking Committee on March 21, 1978, U.S. Chamber of Commerce.
"Export-Import Bank Operating Authority (H.R. 11384)." Address given to the Subcommittee on International Trade Investment and Monetary Policy, House Committee on Banking, Finance and Urban Affairs on March 15, 1978, U.S. Chamber of Commerce.
The Importance of the Eximbank to the U.S. and Its Airplane Industry. Prepared by the Labor Liaison Task Group and the Finance Task Group of the Aerospace Industries Association in Washington, D.C., 1978.
"Extension of the Export-Import Bank of the United States." Statement given before the Subcommittee on International Finance, Senate Committee on Banking, Housing and Urban Affairs, on April 13, 1978.
Statement on H.R. 5501, a Bill to Amend the Export-Import Bank Act given by the Machinery and Allied Products Institute to the Subcommittees on International Trade, Investment and Monetary Policy, House Committee on Banking, Currency and Housing on March 28, 1977.
Derr, Charles I. Statement of the Machinery and Allied Products Institute concerning S. 2520, the Eximbank Act of 1945 given to the Subcommittee on International Finance, Senate Committee on Banking, Housing and Urban Affairs on March 21, 1978.
Statement concerning Export-Import Bank of the United States by the Aerospace Industries Association of America, Inc. given to the Subcommittee on International Trade, Investment and Monetary Policy, House Committee on Banking, Currency and Housing in March 1978.

TAX

"Income Tax Treatment of Americans Employed Abroad." Address given to the House Committee on Ways and Means on February 23, 1978, U.S. Chamber of Commerce.
Elimination of "Deferral": The Effects of Additional Foreign Tax Payments on U.S. Treasury Revenues and Company Tax Costs. Arthur Andersen & Co., April 1978.
"Taxation of Foreign-Source Income." Address given before the Subcommittee on Trade, House Committee on Ways and Means on March 8, 1978, International Economic Policy Association.
"Income Tax Treatment of Americans Working Abroad." Testimony by U.S. Chamber of Commerce to the House Committee on Ways and Means on February 23, 1978.
"President's Tax Program and the Taxation of Foreign-Source Income." Statement given by Electronic Industries Association International Business Council to the House Committee on Ways and Means on March 14, 1978.
Statement on "Proposals to Modify the Tax Treatment of American Individuals Working Outside the United States," by the Machinery and Allied Products Institute to the House Committee on Ways and Means on February 23, 1978.
Statement concerning Changes in Internal Revenue Code Sections 119 and 911 by the Aerospace Industries Association of America, Inc. given before the House Committee on Ways and Means on February 23, 1978.
Statement on Sec. 911 Affecting Taxation of Americans Living Abroad by the Aerospace Industries Association of America, Inc. on April 18, 1977.
Briefing Paper on Sec. 911 of Internal Revenue Code Concerning Tax Status of Americans Living or Residing Abroad prepared by the Aerospace Industries Association on February 3, 1977.
Statement on Proposed Tax Changes submitted by Aerospace Industries Association of America, Inc. to the House Committee on Ways and Means in April 1978.
Briefing Paper on Sec. 911 of Internal Revenue Code—Concerning Tax Status of Americans Living or Residing Abroad prepared by the Aerospace Industries Association on March 7, 1977.
Statement on President Carter's Tax Proposals and Related Issues presented by the Machinery and Allied Products Institute to the House Committee on Ways and Means on March 6, 1978.

CUSTOMS

"Customs Procedural Reform." Testimony by Electronic Industries Association International Business Council to the Subcommittee on International Trade, Senate Committee on Finance on February 2, 1978.

BOYCOTT

National Association of Manufacturers submission to Commerce Department on proposed boycott regulations on November 18, 1977.

National Association of Manufacturers submission to Commerce Department on boycott reporting requirements on January 30, 1978.

Letter from Chairman of the Board of Deere & Company to Senators and Congressmen from Iowa and Illinois concerning anti-boycott regulations, March 8, 1978.

EXPORT CONTROLS AND ARMS SALES

"Environ. etal Restraints on U.S.A. Exports" Conference and the Need for Export Expansion, National Legal Center for the Public Interest, Washington, D.C., May 1978.

The Impact on U.S. Industry of a Restricted Arms Control Policy. Electronic Industries Association: Washington, D.C., April 1977.

Statement on Foreign Military Sales by the Aerospace Industries Association of America, Inc. at hearings before the Subcommittee on International Security and Scientific Affairs, House Committee on International Relations on February 10, 1978.

"Environmental Restraints on U.S. Exports." Statement given before the National Legal Center for the Public Interest on April 6, 1978, National Association of Manufacturers.

"Controls on Product Exports and Technology Transfers." Address given to the Electronic Industries Association International Business Council meeting in Washington, D.C. on March 14, 1978.

TRADE NEGOTIATIONS

"The Multilateral Trade Negotiations." Address given to the Electronic Industries Association International Business Council in Washington, D.C. on March 14, 1978.

Fox, Lawrence A. "Multilateral Trade Negotiations: Prospects for Successful Negotiations in a Troubled and Independent World." *International Essays for Business Decision Markers—1977.* The Center for International Business: Houston, Texas, 1977, pp. 144–151.

Statement of the Chamber of Commerce of the United States (By Elizabeth V. Perkins*)

The Chamber of Commerce of the United States appreciates the opportunity to make suggestions for legislation to implement the far-reaching international agreements now being finalized in the multilateral trade negotiations (MTN) under the auspices of the General Agreement on Tariffs and Trade (GATT). The National Chamber—now consisting of over 76,000 large and small businesses, 2600 local and state chambers, 1200 trade and professional associations and 42 American Chambers of Commerce Abroad—is convinced that the United States has a major stake in a successful outcome of the Tokyo Round. We supported elements of the Trade Act of 1974 and have monitored the progress of the negotiations closely during the last five years.

The Chamber's Multilateral Trade Negotiation Task Force was established to make a thorough analysis of the proposed agreements, recommend a Chamber position on the final result and consider appropriate implementing legislation. The Task Force, chaired by former Special Trade Representative W. D. Eberle, has a membership which represents a broad cross section of the U.S. economy, including exporters, importers, producers for the domestic market, agricultural and non-agricultural interests. (See attached list.)

---

* Director, Legislative Research and Special Studies, International Division, Chamber of Commerce of the United States.

On the basis of the Task Force's analysis of the existing draft agreements, the National Chamber concluded in January that on balance the nontariff agreements offer a number of benefits to the United States economy that appear to outweigh any disadvantages. However, the Chamber notes that the texts are not finalized, that certain significant issues including final tariff agreements remain outstanding, and that the effect of the nontariff agreements will depend to a large degree on how the implementing legislation is drafted.

Because the details of the implementing legislation will be such a crucial factor in determining the impact of the Tokyo Round, and because the legislative package will be unamendable, the Subcommittee is to be congratulated for providing an early opportunity for recommendations. Nevertheless, we are seriously hampered by the fact that we do not yet have final texts of the agreements. Therefore, we offer the following suggestions for implementing legislation at this point, but request that we be allowed to make additional comments once the negotiations are completed and specific draft legislation is available.

GENERAL RECOMMENDATIONS FOR IMPLEMENTING LEGISLATION

The National Chamber recognizes that an effective set of domestic laws to deal with unfair trade practices is an important element in the maintenance of an open world trading system. At the same time, we urge that care be taken to ensure that the MTN implementing legislation is drafted with the aim of expanding world trade rather than creating anticompetitive devices.

Since many of the proposed nontariff agreements deal with issues which have not been covered by international rules before, their eventual effect will depend not only on domestic implementation, but also to a major extent on the way they are interpreted and applied internationally. Therefore, it is crucial that the U.S. implementing legislation provide a mechanism for private interests to request the government to deal with complaints internationally, as well as participate where appropriate in the defense of U.S. practices against foreign complaints. Once the consultation and dispute settlement process begins, there should be close consultation with interested private parties during the preparatory work for the international complaint and throughout the entire process.

We note that the unique private sector advisory process established by the Trade Act of 1974 has been an extremely useful tool to make certain all interests have an opportunity to be heard in the formulation of trade policy and that the U.S. negotiators have access to detailed information concerning specific industries and sectors of the economy. Therefore, we recommend that a system of private sector advisory committees be retained to monitor the implementation of the agreements and advise on future negotiations after the Tokyo Round is completed. The Administration should be authorized to establish both sectoral and functional committees. Care should be taken to ensure that all sectors of the economy, including wholesalers, retailers, the service industry and consumers, as well as industrial producers, labor, and agricultural interests have the opportunity to be represented on any functional committees.

RECOMMENDATIONS FOR IMPLEMENTATION OF SUBSIDIES CODE

Although certain interested parties have complained of inadequacies in the subsidies/countervailing duties code, the National Chamber recommends that after considering all segments of the population and all sectors of the economy. Congress should conclude that on balance the code is in the national interest. Nevertheless, we are disappointed that the subsidies code has been unable to deal with a broad range of direct and indirect tax issues. We recommend that the Committee and the Congress call upon the Administration to continue to pursue these issues through international negotiations. Furthermore, the implementing legislation should express the understanding of the Congress that until the successful conclusion of such future negotiations, the subsidies code should not prejudge the pending GATT cases dealing with the U.S. DISC program and certain direct tax practices of other countries.

To provide for greater certainty in the administration of the countervailing duty law, the implementing legislation should clearly define both material injury and causation consistent with the requirements of the subsidy code. The definitions should be constructed in a manneer that does not turn legislation designed to combat unfair trade practices into a procedure that can be used to encourage anticompetitive behavior. Material injury should be defined as less than the "serious' 'injury test for U.S. escape clause actions, but greater than injury as it is presently interpreted under the current U.S. antidumping law.

The implementing legislation should require that, before countervailing duties can be imposed, the subsidy must be shown to be a "substantial" cause of the injury. Such a clarification will provide better direction to the administering authorities. The national interest is not served by requiring the lowest possible level of causation. On the other hand, a "major cause" test would be too stringent.[1]

The National Chamber supports effective administrative procedures and timely resolution of complaints under the countervailing duty legislation. In response to the Subcommittee's question concerning the proper agency to administer the new legislation, the Chamber suggest that in light of experience, changes may be necessary either through the implementing legislation or in collateral legislation. We would support constructive measures to further the timely and effective implementation of all the codes. A major purpose of all the codes is to establish greater certainty regarding international rights and obligations. Clearly, whichever body administers the codes should make its decisions on the basis of legal criteria and economic analysis, rather than domestic political and foreign policy considerations.

The subsidy code's requirement that domestic countervailing duty investigations be concluded within a year is reasonable, providing the statutory deadlines are scrupulously met.[2] The implementing legislation should not establish a shorter minimum investigative period because in many cases a shorter period could reduce markedly the quality of the deliverations necessary to make the important decisions on subsidy, injury and causation. Due process requires adequate time for each of these decisions.

The U.S. Government should make an effort to pursue apparent violations of the code through the international dispute settlement mechanisms. The implementing legislation should establish a maximum period of 90 days in which the government can determine, on the basis of a complaint filed by an interested party, and/or on the basis of the government's own information, whether to take international action under the consultation and dispute settlement procedures of the so-called second track of the subsidies code. The first 30 days could be used to review the sufficiency of the complaint or information, and 60 additional days could be used to investigate the allegation, corroborate the information and consult with other signatories before determining whether to begin the formal international dispute settlement process. Of course the domestic countervailing duty process and the international dispute settlement procedures could occur simultaneously.

Ideally, the code and implementing legislation should treat export subsidies on all products alike, regardless of whether the product is primary or non-primary, agricultural or non-agricultural. However, since the subsidies code does make distinctions between industrial and agricultural subsidies, the phrase "prices materially below those of their suppliers to the same market" should be defined in the implementing legislation as "prices which cause sales diversion or price disruption." In urging that agriculture be treated as industry is treated under the subsidies code, it is also important to recognize that in certain instances the practices of international lending institutions, which are supported in part by U.S. contributions, may have the effect of subsidizing products of other countries which compete with U.S. agricultural commodities and with U.S. industrial products.

RECOMMENDATIONS FOR IMPLEMENTATION OF THE SAFEGUARDS CODE

The question of selective safeguards remains the major stumbling block to completion of the safeguards negotiation because certain less developed countries (LDCs) are concerned that selective safeguards would be targeted against their products. It is in the U.S. interest to have greater LDC participation in

[1] Certain Task Force members did not agree with the recommended definitions. It was felt that neither the international obligations of the United States in the new subsidies code, nor the need to deal effectively with foreign government unfair trade practices, warranted the creation of a higher threhold of injury than at present under U.S. antidumping law or the requirement that the subsidy be a "substantial cause" of injury. This was most strongly felt by members speaking for labor intensive industries, including small businesses, particularly those that have already been injured by foreign government subsidies.

[2] One Task Force member recommended a maximum investigative period of ten months.

GATT as a whole, as well as wide LDC adherence to the new codes. We therefore recommend that if the code allows selective safeguards, developing nation concerns be taken into account in considering criteria for selective safeguards in the implementing legislation.

Although we understand that in certain circumstances, selective action might be more appropriate and less trade restrictive than safeguards imposed on a most favored nation basis to all suppliers, additional criteria should nevertheless be established for selective safeguards to ensure that they are not overused. For example, the imports from a specific country or countries should be clearly identifiable as the cause of the injury. There is also concern as to the possible adverse effects of selective safeguards on U.S. exports.

The Office of the Special Representative for Trade Negotiations (STR) has suggested that changes be made in the President's authority to negotiate Orderly Marketing Agreements (OMA) from third countries in cases where an OMA is already in effect. Although exactly what the effects of such changes would be is not clear, the National Chamber is concerned with the implications of this proposal and hopes that it will be carefully scrutinized.

RECOMMENDATIONS ON CUSTOMS VALUATION CODE

On the whole, the proposed customs valuation code would provide significant benefits to the United States because of the high uplifts now being applied by many other countries. The current STR implementation proposal leaves too much discretion in the administration of the interpretative notes. The Joint Industry Working Group on Customs Valuation, on which the Chamber is represented, testified independently before this Subcommittee. Our specific recommendations for clarification of the interpretative notes on the implementing legislation will be incorporated in the Working Group's further comments to STR.

CONCLUSION

We appreciate this chance to make recommendations for legislation to implement the MTN agreements. Although reserving comments on other issues at this time, we take a generally positive view of all proposed nontariff agreements. We look forward to having the opportunity to submit additional suggestions as the negotiations are finalized and the implementing proposals become clearer.

MULTILATERAL TRADE NEGOTIATION TASK FORCE—1979

W. D. Eberle, Chairman, Senior Partner, Robert A. Weaver, Jr. and Associates

Donald G. Brotzman, Vice President, Government Relations and Economic Affairs, Rubber Manufacturers Association.
Thomas A. Christiansen, Manager, International Trade Relations, Hewlett-Packard Company.
Paul H. DeLaney, Jr., DeLaney and Patrick.
Charles Derecskey, Program Manager, Governmental Programs, IBM Corporation.
David J. Elliott, Manager, Customs and International Trade Affairs, Procter and Gamble Company.
Edward Florkoski, Vice President, International Trade and Economics, American Iron and Steel Institute.
Myron Foveaux, Legislative Representative for Trade and Economic Policy, Manufacturing Chemists Association, Inc.
Theodore R. Gates, Consulting Economist.
Allan Grant, President, American Farm Bureau Federation.
Richard Goodman, Vice President, Continental Grain Company.
Harry W. Jones, Vice President and Director, Overseas Affairs, Westinghouse Electric Corporation.
Dr. William Kling, Washington Representative, American Soybean Association.
Will E. Leonard, Busby, Rehm and Leonard.
Richard Lyng, President, American Meat Institute.
Irene Meister, Vice President, International American Paper Institute.
John V. Moller, Assistant Director, Government Affairs Division, Motor Vehicle Manufacturers Association.
Stanley Nehmer, Director, Economic Consulting Services, Inc.
Waring Partridge, McKinsey and Company.

John Pellegrini, Senior Attorney, J. C. Penney, Inc.
Alan B. Spurney, Director, International Business Council, Electronic Industries Association.
T. D. Taubeneck, President, Rockwell International Trading Company.
C. William Verity, Jr., Chairman of the Board and Chief Executive Officer, Armco Steel Corporation.
Dr. Elizabeth V. Perkins, Executive Secretary MTN Task Force, International Division, U.S. Chamber of Commerce.

FAFNIR TEXTRON,
New Britain, Conn., March 2, 1979.

Subcommittee on International Trade, Senate Finance Committee, Dirksen Senate Office Building, Washington, D.C.

PROPOSED AIRCRAFT AGREEMENT—MULTILATERAL TRADE NEGOTIATIONS

SENATORS: As Chairman of ISAC 17 (Industry Sector Advisory Committee on Machine Tools, Other Metalworking Equipment, and Other Nonelectric Machinery for Multilateral Trade Negotiations), as Chairman of the Government Relations-International Trade Committee of Anti-Friction Bearing Manufacturers Association, (AFBMA), and on behalf of Fafnir Bearing Division of Textron Inc., I must express my deep concern—my real fear—that the proposed Aircraft Agreement will cause grave injury to a number of U.S. industries, especially to the antifriction bearing industry.

The proposed Aircraft Agreement will set a zero duty rate, effective January 1, 1980, on aircraft and aircraft parts (as listed in the covered products). This zero duty rate and absence of staging exceeds the authority the Congress extended to the President in the Trade Act of 1974. Authority will be requested, I understand, in the "package" to be presented to the Congress.

Fafnir and AFBMA are greatly concerned over the possibility of duty free treatment of any ball or roller bearings regardless of the intended end use. In 1973 the ball bearing industry was found to have been injured by increased imports. Since that time imports have increased both in absolute terms and as a percentage of domestic consumption.

Bearings used in aircraft may be described in five groups. There are no reliable data on the quantity of bearings involved but, in some cases, we can make reasonable estimates. The groups of bearings involved in aircraft are:

Instrument ball bearings.—These ball bearings are principally miniature (0–9 mm o.d.) and very small (9–30 mm) ball bearings. They are used in aircraft navigation systems and flight control instruments. They are produced principally by three small highly specialized companies. Total value might be $30 million.

Aircraft instrument bearings.—These are the bearings which actuate movement of control surfaces and support the heavy loads of wing flap extensions. They are subject to heavy loads and slow rotation. They are ball bearings, needle roller bearings, or other roller bearing type; and principally of small size—30–50 mm o.d.

Main turbine bearings of jet engines.—These are large, high speed, precision ball bearings and cylindrical roller bearings. They are specialized products of specialized divisions of about five major companies. Value may approach $30 million.

Wheel bearings.—These are specialized tapered roller bearings. On a typical landing these bearings accelerate from a standstill to over 100 miles per hour in about one second.

Miscellaneous bearings.—Many sizes and types. These bearings are used in motors (hydraulic, air, electric), pumps (liquids, air, vacuum), fans and blowers, compressors, and other similar types of equipment used in aircraft and in many many other industrial applications. The bearings are not special aircraft type—they are the volume-produced precision bearings employed in a variety of applications.

None of the products I mentioned in the preceding paragraphs should be covered by an "aircraft agreement".

While many ball and roller bearings used in aircraft are specialized, the last group described above are not; diversion to other end uses should be anticipated. Further, the new principle which would be promulgated, the classification of items by intended end use, is one which would present an opportunity for abuses where that opportunity does not now exist. The principle would also undermine the effectiveness of General Headnote 10 (ij) of the Tariff Schedules, a note which has been exceedingly helpful in keeping imports identifiable rather than having them grouped into basket categories of "parts of".

We are not objecting to the proposed agreement as such if it is confined to aircraft and major identifiable products and assemblies; e.g., jet engines or major assemblies produced for a specific aircraft. We do object strongly to being included without our participation and, now, over our objections because we know that only harm will be the result to the domestic bearing industry.

W. E. DECAULP.

STATEMENT OF THE TREAT SHOPPE

MARCH 15, 1979.

The Treat Shoppe International Cheese and Foods, Inc., firmly supports the prompt passage of S. 538, concerning the extension of the waiver of countervailing duties, retroactive to Jan. 3, 1979.

We base our support on the following factors:

1. Failure to pass S. 538 would endanger the prompt conclusion of the Tokyo round of the General Agreement on Tariff and Trade (GATT). The European Economic Community has made clear the importance of extending this countervail duty waiver. The successful resolution of five years of Multilateral Trade Negotiations hinges, in part, on this extension, retroactive to Jan. 3, 1979.
2. The addition of an average forty to sixty cents a pound of duty per cheese at the import level would result in substantial price increases at the consumer level. This would be highly inflationary.
3. As imported cheese retailers, we fear that failure to extend the countervail duty waiver authority could result in many business failures at all levels, with a corresponding loss of many jobs.

The Treat Shoppe International Cheese and Foods, Inc. urges the swift consideration and passage of S. 538, as presently constituted.

THE FERROALLOYS ASSOCIATION,
Washington, D.C., February 23, 1979.

Mr. MICHAEL STERN,
Dirksen Senate Office Building,
Washington, D.C.

DEAR MR. STERN: The Ferroalloys Association has been deeply involved in the Multilateral Trade Negotiations through our participation in ISACs 11 and 12. We have addressed questions relating to revisions of our current laws on antidumping and countevailing duties and are concerned of the effect implementing legislation for the trade agreements will have on our current laws let alone our suggested revisions to the laws.

Our industry believes that any implementing legislation should protect American industry from any and all unfair trade practices particularly when dumping or subsidies are involved. We have enclosed a copy of ou: May 15, 1978 recommendations sent to the Subcommittee on Trade—House Ways and Means and stand with all the recommendations therein.

Additionally we endorse all the positions made by the steel industry as represented by the American Iron and Steel Institute during your committee's hearings on the implementing legislation particularly with regard to dumping and countervailing duties.

Very truly yours,

GEORGE A. WATSON,
Executive Director.

THE FERROALLOYS ASSOCIATION,
Washington, D.C., May 15, 1978.

Mr. JOHN M. MARTIN, JR.,
Chief Counsel, Committee on Ways and Means, U.S. House of Representatives, Longworth House Office Building, Washington, D.C.

DEAR MR. MARTIN: The Ferroalloys Association thanks the Subcommittee on Trade for its interest in amending various American trade laws and regulations to provide more expenditious, effective and equitable relief from unfair practices affecting import competition. The Ferroalloys Association and its members appreciate this opportunity to respond to the Subcommittee's request for recommendations of such amendments.

The Ferroalloys Association ("TFA") represents the fourteen companies which account for virtually all of the American production of chromium, manganese and silicon ferroalloys, metals and related products. Ferroalloys and related metals are intermediate products essential to the production of steels, irons and aluminums.

The ferroalloy industry is critically important for our nation's economy and defense. For example, chromium is essential to the production of alloy and stainless steels and almost all specialty steels and superalloys. No steel at all can be made without manganese; and, silicon is a basic necessity for the production of iron and aluminum castings and all silicone chemicals. In recognition of their importance, our strategic and critical materials stockpile contains substantial quantities of both chromium and manganese ferroalloys and the ores required for their production.

Unfortunately, the ferroalloy industry in the United States is in dire straits because of the increasingly great volume and often unfair pricing of imports. Imports of ferroalloys from other countries have long been a problem. But, in recent years, the volume of imports in tons and the penetration of the domestic market have reached crisis proportions. Imports have grown from 143 thousand tons in 1960 to 373 thousand tons in 1970, and exceeded one million tons in 1977. During the same period, imports have climbed from 8 percent of domestic consumption in 1970, reaching a level of 47 percent last year. These imports have driven the American ferroalloy industry to the brink of collapse as a viable domestic industry.

The domestic ferroallay industry is convinced that the high volume and low prices of many ferroalloy imports is a result of unfair trade practices, such as dumping and the granting of export subsidies, bounties and grants by a number of other producing countries. If trade in ferroalloys is fair, the domestic industry can compete and will survive. But, without significant governmental efforts to assure that trade is indeed fair, it is doomed.

Producers of silicon metal have filed an antidumping petition with Treasury naming a Canadian company as the violator, a petition Treasury recently accepted for investigation. Various ferroalloy producers and TFA are presently preparing other petitions under both the antidumping and countervailing duty statutes.

The ferroalloy industry needs more equitable treatment in the multilateral trade negotiations—American duties on most of these products are significantly lower than those of the EEC and Japan. Tariff equalization, however, is by no means enough. Our producers are as efficient and competitive as any in the world. Yet, they cannot compete with unfairly priced imports—with imports which are subsidized by foreign governments or which are priced below cost of production or prevailing prices in other major markets.

One of the problems of the American ferroalloy industry is that there is considerable excess capacity to produce ferroalloy products in the rest of the world. The result of overcapacity abroad is a tale that American industries are hearing more and more often and more and more menacingly. Rather than reducing production in times of oversupply (as do most American producers), offshore producers are increasingly sustaining production (and, hence, their own employment) and selling at very low prices that often are below cost. Likewise, the foreign producers' governments frequently encourage these trade practices by subsidizing export sales to the point where the foreign producer can undersell American companies.

The statutes on which the Subcommittee has sought comment provide major legal bulwarks against these unfair trade practices. Unfortunately, these statutes often do not work as the Congress intended. They are cumbersome in operation, their enforcement is unduly drawn-out and they frequently close the barn door only after the horse is gone. To be effective, these statutes should be amended to provide streamlined, clear, fair and expeditious means of attacking these practices, and to provide a real deterrence to importers and foreign producers contemplating actions these statutes make unlawful.

I. The Antidumping Statute

If the antidumping statute is to provide an effective means of preventing and deterring the unfair trade practice of dumping in the United States, it should be amended in a number or ways. These amendments should A) make the procedures for enforcing the Act more expeditious and effectual than they now are; B) provide remedies in cases where violations are found which will prevent and deter dumping far more effectively than present remedies; and C) clarify the statute in ways necessary to make its enforcement more uniform and more consistent with the intent of Congress than is often now the case. These areas of proposed amendments are discussed in turn.

A. AMENDMENTS TO ENHANCE ENFORCEMENT PROCEDURES

TFA believes that the principal problems with present enforcement procedures are fivefold: 1) enforcement actions now take much too long; 2) a procedure is necessary to expedite further dumping enforcement in industries in which dumping has been proven to be prevalent through earlier successful antidumping proceedings; 3) there is need for fairer procedural safeguards than the Department of the Treasury now provides; 4) there is need for more effective judicial review of the actions of Treasury and the International Trade Commission in enforcing the statute; and 5) there are presently not enough personnel enforcing the statute.

1. Compressing the time for considering dumping petitions

It now takes too long for an antidumping petition to be investigated and for the investigation to be concluded. This problem can be alleviated by two amendments which would compress the time for carrying out an antidumping investigation to its conclusion to a suggested total period of six months.

(a) *Compressing the time for Treasury to act.*—First, the time allotted to the Department of the Treasury to determine whether sales have been made at less than fair value should be reduced. Today, once Treasury decides to undertake an investigation, it has from six to nine months to make its final fair value determination. In fact, Treasury completes most investigations in two or three months. If Treasury were to be provided adequate staffing and other resources, the time for a preliminary decision could be reduced to three months—allowing three additional months for the final determination. Further, the Customs Service could speed up the process by ceasing to grant routinely extensions of the time required to answer its questionnaires.

(b) *Simultaneous reference to the International Trade Commission.*—Second, the time for conclusion of a dumping case could be reduced by three months if dumping petitions were referred to the ITC at the time an affirmative preliminary determination of sales at less than fair value is made by Treasury. This would cause the injury determination from ITC to be available simultaneously with the final decision by Treasury—three months after the preliminary decision.

2. Expediting further enforcement in industries where dumping is prevalent

There are industries in which dumping is endemic. This can be because there is world overcapacity, or because foreign producers coordinate their unfair practices, or for other reasons. When dumping becomes routine, the affected domestic industry is often left without any effective remedy and must resort to an expensive and time consuming case by case procedure. No sooner is it successful in stopping dumping from one country than it loses sales to dumping from some place else.

The Act should be amended to provide some form of automatic procedure for Treasury to initiate, on its own, dumping investigations in an industry in which previous antidumping petitions have resulted in two or more preliminary affirmative dumping determinations. To make this work, we would suggest the establishment of guidelines by Treasury not dissimilar to the reference price system now in force for steel products. If Customs finds sales of imports below the guideline price, it would inform Treasury which would automatically initiate an antidumping investigation.

3. Providing fair procedural safeguards

The procedures of customs and of Treasury should be made fairer than is now the practice.

(a) *The standard for the Secretary's decision.*—First, the Act should require that the decision of the Secretary be supported by substantial evidence on an adequate record. Without a formal record, judicial review cannot be effective—unless it is *de novo*.

(*b*) *Procedural safeguards.*—At present, the Treasury Department has very broad authority to discontinue cases, to reopen issues and to revise determinations without procedural safeguards generally afforded in the case of governmental actions of considerably less magnitude. The Act should be amended to require the application of procedural due process to such decisions.

4. Providing effective judicial review

The actions of the Secretary of the Treasury and of the International Trade Commission should be made subject to more rigorous, effective judicial review than they are under present law.

(*a*) *The extent of review of the Secretary's actions.*—The actions of the Secretary—both his substantive and procedural decisions and actions—must be subject to effective judicial review. *Any* decision of the Secretary on the existence and extent of less than fair value margins by a foreign producer which adversely affects a petitioning United States producer should be reviewable. And, the reviewing court should sustain those actions only if fully consistent with the statute and if supported by substantial evidence on the record.

(*b*) *Review of the ITC actions.*—The Act should be amended to eliminate the present uncertainty concerning judicia lreview of ITC injury determinations by providing that such decisions are subject to "substantial evidence" judicial review, and that the forum for review of all antidumping actions, including those of the ITC, is the Customs Court.

5. Providing adequate staff

The antidumping statute can be adequately enforced only if the agencies which enforce it are adequately staffed. The President and other high officials in the Administration have made it clear that they support vigorous enforcement of this law. The Congress, therefore, should increase substantially the staff and resources assigned to antidumping enforcement to permit the proper enforcement of the statute in the face of the wave of dumping practices now engulfing the United States.

B. AMENDMENTS TO PROVIDE MORE EFFECTIVE REMEDIES

At present, the importer who dumps has considerable incentive to keep dumping until he is caught. Indeed, the dumper suffers no meaningful penalty until a year or more after Treasury initiates an investigation. And, that is usually well after the dumping has begun.

As a result, an importer contemplating dumping has little reason not to dump—for even if he is caught, he will already have for a long time gleaned the benefits he sought; and, he will be subject to no penalty for his past illegal actions. Shortening the time for antidumping investigations will help this problem, but that alone is not enough. What is essential is that the statute be amended to improve the effectiveness of the remedies available to those injured by dumping.

1. Making dumping duties retroactive

At present, dumping duties are assessed only back to the date of Treasury's preliminary determination of sales at less than fair value. This permits the importer six months of "free" dumping while the investigation is proceeding—on top of the dumping that preceded the investigation. Thus, dumping goes unpunished for much longer than this six month period.

In all cases where dumping duties are finally ordered, they should be made retroactive to the beginning of the period during which Treasury finds there have been less than fair value sales. To fail to impose dumping duties for the entire period of less than fair value sales is an open invitation to foreign producers to dump their wares in the United States.

2. Requiring an importer to deposit additional duties

Further, the importer should be required to deposit with Treasury the actual additional duties at the time of a preliminary affirmative determination of dumping. At present the importer is required only to post bond at the time of the preliminary determination. Obviously, the cost of the bond is only an insignificant portion of the duty that would eventually be assessed if a final determination is made; and, as such, the bond deposit is just not an effective restraint against further dumping.

This would be no new departure since, in other circumstances, an actual deposit of duties is required. For instance, importers must deposit the higher duty claimed by the Customs Service in valuation cases pending before the Customs Court. Similarly, foreign antidumping laws provide for the assessment of provisional duties.

3. Authorizing a private cause of action

The antidumping law is a statute designed to prevent unfair trade practices. Dumping is an unfair trade practice—recognized as such throughout most of the world—which is highly injurious to the domestic producers who must compete in the market place with unfairly and illegally priced material. One of the major problems with the American antidumping law is the fact, described above, that it does not adequately discourage an importer or foreign producer from dumping.

The antidumping statute could be made far more effective and could enhance the relief available to domestic producers harmed by dumping if it authorized one harmed by dumping to bring a private cause of action against importers and foreign producers who have engaged in the dumping which injured him.

At present, there is a private cause of action available—but only for violations of the very restrictive criminal provisions of the antidumping statute of 1916. There is no such provision in the Antidumping Act of 1921, as amended, which is the statute by which dumping has been combatted since its initial enactment 57 years ago. While the 1916 Act permits private treble damage suits, it puts a plaintiff to unduly stringent elements of proof. For example, it requires a successful plaintiff to prove that the dumping importer had a specific malicious intent to destroy or injure an American industry or to restrain or monopolize United States trade. Because it is difficult to prove such matters, the 1916 Act has been virtually unused by private complainants injured by dumping.

What is needed is an amendment to the Antidumping Act of 1921 to permit private suits by those harmed by violations of that statute. That is the antidumping statute which is operative today. And, private causes of actions have worked extremely well in the antitrust area. Indeed, it is the prospect of private treble damage suits that often provides a disincentive for potential antitrust violations far greater than that of the fear of facing an agency investigation.

The amendment authorizing damage actions in dumping cases should provide for treble damages for successful plaintiffs. The difficulty and expense of successfully concluding such an action and the benefits importers gain from engaging in unlawful trade practices are both so great that treble damages are necessary and entirely appropriate to induce producers incurring harm to bring suits and to deter would-be dumpers.

C. AMENDMENTS TO CLARIFY THE STATUTE TO IMPROVE ITS ENFORCEMENT CONSISTENT WITH ITS BASIC INTENT AND THE WILL OF CONGRESS

In many cases, antidumping enforcement is hamstrung by very narrow administrative interpretations of the statute. A related problem is that the vagueness which permits the statute to be read unduly narrowly also fosters inconsistent applications. These problems can be significantly alleviated by statutory amendments which specify and clarify its meaning.

1. Determinations by the Department of the Treasury of Sales at Less Than Fair Value

The statute should specify in greater detail the factors which the Secretary of the Treasury is to consider in making the calculations necessary to determine whether there are, in fact, sales by the importer at less than fair value.

(*a*) *Cost of production cases.*—Such amendments are especially necessary with regard to the definitions used and factors considered in calculating the "cost of production" basis for ascertaining the existence of dumping sales. While cost of production cases formerly were infrequent, they have grown in importance. Many world industries have considerable excess capacity which foreign producers are loathe not to use fully, even when demand is slack. As a result, the focus of dumping often now has shifted from selling in the United States below the home market price to selling everywhere, whenever necessary, below cost.

The massive dumping of ferroalloys into the United States is largely of the below "cost of production" sort. It is critical that the statutory and regulatory definitions of such cost of production items as overhead costs, depreciation and cost-of-capital employed be refined, clarified and made more specific, and more in accordance with appropriate economic considerations, than is now the case.

(*b*) *Sales price comparison cases.*—More specificity and greater clarity is likewise needed in the definitions used and factors considered in dumping cases where the issue is whether an importer's United States prices are below his prices in the home market or in some significant third market. The statute should be amended to specify in greater detail than at present the factors to be considered in calculating home market prices, purchase prices, foreign market value and exporter's sales prices.

(*c*) *State-controlled companies.*—The statute and regulations also should be made more specific and clear as to the rules used when a dumping allegation is made against a company which is state-controlled. These cases are made especially difficult by accounting and economic differences between the state-controlled and free market systems. However, it is important that these difficulties be adequately addressed in that it is just such companies that are particularly likely to keep production high by selling below cost or by selling below the "real" home market price. The statute and regulations require better guidelines than at present for dealing with the special problems of accounting practices and of the availability and comparability of meaningful price and cost data posed by state-controlled companies.

2. Injury determinations by the International Trade Commission

There are three problems concerning the ITC's injury determinations that are unlikely to be adequately solved unless addressed by the Congress. They involved (a) the statutory meaning of "injury" and of the causal connection required between less than fair value sales and that injury; (b) the statutory injunction to consider the likelihood of injury from less than fair value imports; and (c) the cumulation, for injury purposes, of less than fair value imports from a number of countries.

(*a*) *The meaning of "injury" and of the causal connection between less than fair value sales and that injury.*—The statute directs the ITC to determine whether an American industry "is being or likely to be injured, or is prevented from being established, by reason of the importation of [less than fair value] merchandise into the United States." The legislative history of the Trade Act of 1974 make clear that "injury" need not be "material" or "serious" (as is required for an Escape Clause determination) so long as it is not inconsequential or insignificant. That legislative history also makes clear that the casual link between less than fair value sales and injury need not, as is the case in the Escape Clause section, be a "substantial" one.

The antidumping statute is not the Escape Clause. Congress meant the injury and causation tests to be more stringent for the Escape Clause—and wisely so in that an ITC injury determination in a dumping case has effect only in the context of a finding that the importer has committed the unfair trade practice of making less than fair value sales.

Unfortunately, not all of the ITC Commissioners always adhere to this clearly expressed intent of Congress. Often, an ITC dumping opinion reads like an Escape Clause opinion—holding the domestic industry to unduly rigorous standards for proving injury and causation. It is this kind of inappropriate reading of the antidumping law that has permitted some Commissioners to make negative injury findings in eighty, ninety or more percent of the cases considered. It is this kind of inapproriate reading of the statute that Congress should eliminate.

The statute should, accordingly, be amended to reflect the aforedescribed legislative history. To quote that history (S. Rep. No. 1298, 93d Cong., 2d Sess. 180 (1974)):

> The term 'injury,' which is unqualified by adjectives such as 'material' or 'serious,' has been consistently interpreted by the Commission as being that degree of injury which the law will recognize and take into account. Obviously, the law will not recognize trifling, immaterial, insignificant or inconsequential injury. Immaterial injury connotes spiritual injury, which may exist inside of persons not industries. Injury must be a harm which is more than frivolous, inconsequential, insignificant, or immaterial.
>
> Moreover, the law does not contemplate that injury from less-than-fair-value imports be weighed against other factors which may be contributing to injury to an industry. The words 'by reason of' express a causation link but do not mean that dumped imports must be a (or the) principal cause, a (or the) major cause, or a (or the) substantial cause of injury caused by all factors contributing to overall injury to an industry.

(*b*) *The use of the criteria of likelihood of injury.*—Although the statute requires the International Trade Commission to consider both actual injury and likelihood of injury, in fact, current Commission decisions often focus on actual injury only and seem to ignore prospective injury. With little or no ITC consideration of likelihood of injury, domestic producers often face an impossible choice: bring a case soon after dumping begins and risk a loss at the ITC because the injury from that dumping has not yet fully manifested itself, or delay bringing the case until the injury has become severe—in which event the Act provides no retroactive remedy. The Act requires the ITC to consider both prospective and actual injury and does so to permit its remedies to be employed promptly to avoid business declines and failure and resulting unemployment. Congress should make clear to the ITC that it is to consider this prospective, likely injury as well as actual injury.

(*c*) *Cumulation, for injury purposes of less than fair value sales from several countries.*—The ITC has often dismissed injury claims because it finds the less than fair value imports to be *de minimus* and therefore not capable of adversely affecting the United States industry. Where the total of less than fair value sales is in fact meaninglessly small and those sales have not harmed the domestic producers in any way, this result is appropriate. On the other hand, of course, if small volume imports from one country have caused injury, there should be an affirmative determination.

However, there are circumstances in which there are less than fair value imports from more than one country. In that instance, the ITC should consider those imports together—rather than ignoring their cumulative effect. Obviously the problem of such imports should not be viewed in isolation. Rather, the ITC should consider them as, in fact, they affect the market place—that is, cumulatively.

II. The Countervailing Duty Statute

If the countervailing duty statute is to provide an effective means of preventing and deterring the unfair trade practice of export subsidies, bounties and grants, it should be amended in a number of ways. These amendments should A) expedite the procedures for enforcing the Act and make them far more effective than they now are; B) provide more effective remedies than those presently available; and C) clarify, specify and improve the substance of the statute.

A. Amendments to Enhance Enforcement Procedures

The Ferroalloys Association suggests five forms of legislative action to enhance the enforcement procedures under the countervailing duty statute. These would (1) compress the statutory timetable; (2) require fairer procedural safeguards than Treasury now provides; (3) provide for effective judicial review of agency actions; (4) supply adequate enforcement staff; and (5) provide information available to the Executive Branch to American industry on possible foreign government subsidies of exports to the United States.

1. Compressing the Time for Treasury to Act

The time for the Department of the Treasury to consider countervailing duty petitions should be substantially shortened. Currently, Treasury need not make its preliminary determination as to whether or not a foreign government is giving its exporter a bounty or grant for six months, and its final determination until one year from the date the case is initiated. TFA recommends that these time periods be cut in half—to three months for a preliminary determination and six months for a final determination. This is especially necessary given the damage which delay causes the domestic industry which must compete with these unfairly priced imports.

2. Providing Fair Procedural Safeguards

The procedures under the statute should be made fairer.

(*a*) *The standard for the Secretary's decision.*—First, the Act should require the decision of the Secretary to be supported by substantial evidence on an adequate record. Without a formal record, judicial review cannot be effective—unless it is *de novo*.

(*b*) *Procedural safeguards.*—At present, the Treasury Department has very broad authority to discontinue cases, to reopen issue and to revise determinations without any procedural safeguards generally afforded in the case of governmental actions of considerably less magnitude. The Act should be amended to require the application of procedural due process to such decision.

3. Providing effective judicial review

The actions of the Secretary of the Treasury—both his substantive and procedural decisions and actions—should be made subject to more rigorous, effective judicial review than they are under present law. The reviewing court should sustain those actions only if fully consistent with the statute and if supported by substantial evidence on the record.

4. Providing adequate staff and resources

The countervailing duty statute can be adequately enforced only if the Department of the Treasury is adequately staffed with personnel and resources assigned to do that enforcement. The compressing of Treasury's time-table to consider countervailing duty petitions may well require additional staff and resources. If domestic producers are to avoid having to compete any more or any longer than necessary against unfairly subsidized imports, Treasury must have enough staff and resources to do its job quickly and effectively.

5. Providing information on possible subsidies to American producers

A major problem with countervailing duty enforcement is that it is especially difficult for American industry to learn the details of foreign government subsidies. However, much of this information is doubtlessly available to the Department of the Treasury and to other American governmental agencies, such as the State Department. Treasury should be required to consult with those other agencies and to make periodic public reports in the *Federal Register* detailing direct and indirect subsidies paid by foreign governments to exporters known to those agencies.

B. AMENDMENTS TO PROVIDE MORE EFFECTIVE REMEDIES

As is the case with the antidumping statute, the countervailing duty statute does not now provide either an effective remedy against the offending parties or a meaningful disincentive to the grant or acceptance of illegal subsidies. This problem is greatly exacerbated by the practice by which a foreign government tentatively found to have engaged in a subsidy merely promises not to provide that subsidy in the future. Three amendments are necessary to address this problem of ineffective remedy: (1) making duty assessments retroactive; (2) requiring Treasury to self-initiate investigations in certain circumstances; and (3) authorizing an injured United States producer to bring a private cause of action against foreign producers and importers who benefit from illegal subsidies.

1. Making duty assessments retroactive

Presently, countervailing duties are wholly prospective. Unlike dumping duties, they are not even retroactive to Treasury's preliminary determination that illegal bounties or grants exist—which is made six months after the investigation is launched.

Given that the bounty or grant has been paid at least throughout the one year period of investigation, and, realistically, for some time before, it is unfair not to collect the duty for at least the period of investigation—and for any earlier period in which the subsidy is found to have been made. Since a year or more of bounties and grants are subject to no countervailing duty, the present statute is nothing less than an invitation to foreign governments to give, and to foreign producers and importers to accept, illegal subsidies.

Thus, when a final determination is made that a countervailing duty is to be imposed, the duty should be imposed retroactively at least to the initiation of the investigation—and properly to the time when the subsidy began. To effectuate this imposition of duty, Customs should also be required to withhold appraisement on affected imports upon the initiation of a countervailing duty investigation.

Further, if the foreign government promises to cease granting the subsidy and Treasury accepts that assurance as a condition of not imposing prospective countervailing duties, there should be two further results of the case. First, a retroactive countervailing duty, as discussed above, should be imposed. Second, Treasury should automatically and periodically re-investigate the matter to ascertain that the subsidy is not re-initiated or replaced by a different subsidy. Treasury should conduct this re-examination at least once every year for a period of ten years from its initial decision.

2. Requiring Treasury itself to initiate investigations in certain circumstances

As noted above, Treasury and other federal agencies doubtlessly frequently learn of foreign government subsidies that may be illegal under the countervailing duty statute. The nature of these illegal subsidies is such that United States producers often do not have access to that kind of information. Accordingly, the Act should be amended both to require Treasury to consult with State and other agencies as to information they may have on illegal subsidies, and to require Treasury to initiate a countervailing duty petition as to any products whose exports are subsidized on its own motion whenever the information which it and other agencies have indicates the likelihood of substantial subsidies unlawful under the countervailing duty statute.

3. Authorizing a private cause of action

As suggested earlier with regard to the antidumping law, the countervailing duty statute should be amended to authorize a domestic producer harmed by illegal subsidies to bring a private cause of action against any importers and foreign producers who benefit from that subsidy. As discussd more fully in the antidumping context, a private cause of action is a traditional remedy that has greatly enhanced the enforcement of the antitrust laws. The creation of a private cause of action in the case of illegal foreign government subsidies would provide domestic producers with a remedy far more effective than those now possible under the Act and would significantly deter foreign producers and importers from accepting bounties and grants.

C. AMENDMENTS TO CLARIFY, SPECIFY AND IMPROVE THE SUBSTANCE OF THE STATUTE

1. The term "Bounty or Grant"

The statute should be amended to define with some specificity the pivotal term "bounty or grant." The few cases decided in this area hardly provide the clear meaning which effective statutory enforcement requires. Fleshing out the bare bones of the term "bounty or grant" involves a number of considerations. While these issues are not limited to the two that follow, these are major questions which clearly need the attention of Congress.

(*a*) *The remission of indirect taxes.*—The *Zenith* case, now before the Supreme Court presents the issue of whether the remission of indirect taxes (such as excise taxes) is a "bounty or grant" under the Act. Treasury and the courts have differed on the matter. Such a remission is indeed a subsidy for exports—a benefit given only to one who sells his goods to other countries. Whatever the Supreme Court decides, it would greatly enhance the Act's effectiveness if Congress specifies that such a remission is a "bounty or grant" and illegal under the Act.

(*b*) *The effect of subsidies of exports to third countries.*—In some circumstances, a foreign government may cease or never initiate illegal subsidies for exports to the United States while granting those subsidies for exports to third countries. The Act should be amended to provide that, in that circumstance, the subsidies must be pro-rated among all exports, including those to the United States, for countervailing duty purposes. Money is fungible—and, a subsidy for exports to a third country clearly permits a foreign producer to reduce his price to the American market by giving him additional funds designated solely to subsidize his exports. Indeed, without such an amendment, an exporter can accept subsidies for third country exports but not, technically, for United States-bound exports—and thereby readily gain the desired subsidy of *all* exports and yet evade the strictures of the American countervailing duty statute.

2. Injury determinations and the generalized system of preferences

The Act requires an injury determination only if a product is normally imported free of duty. However, if the reason for the duty-free status of imports is that those imports have been permitted to avoid the payment of duty under the Generalized System of Preferences, an injury determination should not be required. In that case, the imports would be dutiable but for the special waiver of tariffs through GSP. It is most inequitable to require the additional hurdle of an injury determination where a country granted the benefit of GSP treatment has been found to have abused that grant by illegally subsidizing United States exports.

The Ferroalloys Association again thanks the Subcommittee for its interest in the serious problems of effective enforcement of our unfair trade laws relative to imports, and its desire to address those problems. The Association also thanks the Subcommittee for the opportunity to suggest some answers to these problems. It believes that new legislation as suggested herein is necessary to correct the present abuses and weaknesses. Our industry is beleagured by unfairly priced imports; and, as is true of many other industries, these problems must be dealt with realistically and reasonably promptly for the future welfare of our industry.

We will be happy to provide any additional information which the Subcommittee may request.

Very truly yours,

GEORGE A. WATSON,
Executive Director.

STATEMENT OF THE NATIONAL CATTLEMEN'S ASSOCIATION

The National Cattlemen's Association is very interested and concerned with the evenutal outcome of the "Tokyo Round" of the Multilateral Trade Negotiations. Our industry has much to gain or lose depending on how the MTN is implemented and what laws are to be enacted.

Nearly half of U.S. agricultural production relates to the sale of animal products with about half of that figure made up of beef and beef products.

Our organization has not taken a position on the MTN package as presented so far by the Office of the Special Trade Representative. We will reserve judgement until the final package is presented.

However, these hearings provide us an opportunity to express our concerns as we see the MTN package and implementing legislation developing. There are some problems which we would like to see remedied before a package is finalized and presented to Congress.

The MTN is complex and does cover many areas, some of which are much more important to the cattle industry than others.

There are three specific areas in which we are interested and concerned with at this stage. They are the Safeguards and Subsidies Codes and the "Meats Arrangement."

The U.S. cattle producer sells his product almost exclusively on the basis of an individual enterpriser who is oriented to the private marketplace with no governmental subsidization. It is important to the U.S. cattle industry that the MTN and enabling legislation assure the domestic producer he will not be subjected to unfair competition from subsidized imports.

It is our belief that the Safeguards and Subsidies Codes, particularly, as well as the proposed Meats Arrangement, as they have been presented to date by the Special Trade Representative (office) will place U.S. beef producers at a disadvantage.

The fundamental inadequacy of the agricultural segment of the Trade Package is that it fails to guarantee elimination of unfair, unilateral market protectionism and price manipulation by the EC and Japan while at the same time completely exposing U.S. producers to competition from foreign subsidized production and the vagaries of domestic regulatory and investigative procedures.

To prevent the erosion of the U.S. cattle industry's position, the Codes, proposed Meats Arrangement and implementing legislation should be constructed to do the following:

(1) Prohibit subsidized foreign meat from entering the U.S. market until major producing and consuming nations grant access to U.S. meat products that is reciprocal to guarantees granted to foreign suppliers under the U.S. Meat Import Act. Also, assure the right of U.S. producers and packers to trade in the private international marketplace without foreign governmental regulation related to quotas, pricing, etc.

(2) Recognize the market sharing concept, economic correctness, permanence and priority of the U.S. Meat Import Act.

(3) Mandate within the "Meats Arrangement" a Cattle Producers Advisory Panel proportionately representative of private commercial cattle producers from all country signatories to which all proposals coming before the proposed "Council" within the Arrangement will be submitted for private sector advice prior to adoption or implementation.

The NCA submits it should not be necessary to prove that subsidized imports cause injury in order to impose countervailing duties when they are competing with like domestic product that is marketed with no subsidy or government regulation.

The following, as it relates to subsidies, should clearly be stated within the Codes and implementing U.S. legislation.

> With respect to domestic products which are produced and marketed without subsidy or governmental regulation (except as related to matters of standardization, health, sanitation, etc.), the importation or entry of any like product which has been produced or marketed by virtue of governmental subsidy shall constitute wrongful injury and shall be prohibited.

The NCA believes strongly that if the Meats Arrangement is to be at all useful there must be private sector input and involvement. We feel there should be a cattle producers advisory panel to implement the purposes of the Arrangement by:

(*a*) Constituting representative participation of bonafide owners and operators of private sector beef cattle enterprise amongst the signatories.

(*b*) Reviewing and advising the Council on all matters proposed for consideration under the authorities of the "Arrangement."

Further, the NCA feels very strongly that in the formulation of the delegation to all Councils set up by the Codes and the arrangements agreed to in the MTN, e.g., the Meats Arrangement, that there be provisions by either the Executive or Legislative Branch of the U.S. Government that would insure the participation of private industry advisors to the U.S. delegation to this Council.

The NCA looks forward to working with the Senate Finance Committee and staff in the coming months on the MTN package. We are hopeful that a trade package can be accomplished which will be in the best interests of all concerned. We will be prepared to participate at future hearings of the Committee.

AMERICAN INSTITUTE OF STEEL CONSTRUCTION, INC.,
New York, N.Y., February 16, 1979.

To: The Subcommittee on International Trade of the Senate Finance Committee, Senator Abraham Ribicoff, Chairman, Dirksen Senate Office Building, Washington, D.C. (Attention Mr. J. Michael Stern, Staff Director).

Subject: Statement of the American Institute of Steel Construction regarding implementation of provisions in the Multilateral Trade Negotiations.

GENTLEMEN: The American Institute of Steel Construction supports the concept of expanded world trade through the Multilateral Trade Negotiations. However, it feels that the Safeguard provisions of GATT II should ensure that, in the event a sudden, mounting flood of imports threatens the financial solvency and the production capability and capacity of the fabricated structural steel industry and others, the U.S. Administration and/or the Congress should be empowered to take prompt unilateral action to protect an industry before it is weakened and destroyed. Further, we think the U.S. proposed 30% to 40% reduction in import duties for fabricated structural steel in GATT II, which presently range from 3.5% to 9½% and are not providing now any substantial protection from imports for our domestic industry, should be withdrawn from the negotiating table, and no reductions should be conceded.

To enable the Committee members to judge the validity of our comments and recommendations, it is necessary to include a brief description of our industry, its mode of operation, and why it is especially vulnerable to uncontrolled import intrusions. The fabricated structural steel industry is composed of several hundred companies (most of which are relatively small, a number of medium size, and a few large firms. AISC has 350 member companies located in 48 states.) Our fabricating industry is separate from and independent of the steel producers. As a customer group, we buy rolled structural steel shapes and plate from the mills and fabricate this material into the steel frames for buildings and bridges.

Our fabricated structural steel frames most important structures including: manufacturing plants, warehouses, power plants, airport terminals and hangars, schools, hospitals, shopping centers, highway and rail long and short span bridges. Our products are essential for the country—in peace and in war.

Attention should be called to the fact that the Administration's Trigger Price Mechanism to control imports of mill rolled steel products does not apply to fabricated steel. To the contrary, the TPM invites foreign producers to divert restrained mill product exports to such items as fabricated structural steel.

It is customary in the construction industry to bid on a price-competitive basis for building contracts against other domestic companies engaged in the same building trade specialty. This practice operates to apply a market effective down side pressure on prices and profits, and as confirmation of this, characteristically after tax earnings of our members range from a high of 5%+ down to 1% and below. Thus, there is little to give in the way of prices or profits, if and when new factors and foreign competitors enter and disrupt volume and prices in the U.S. market.

The foregoing information highlights the vulnerability of our domestic industry when foreign competitors (government backed we believe) enter prices on bridge contracts in the U.S. as much as 35% below the lowest domestic bidder. (We are convinced these foreign bids are below cost, and constitute dumping.) In two previous periods (1969-72 and 1975-78), the Japanese were very active and disruptive. For their own reasons, which we can only surmise, over the past six months, they have virtually disappeared from the U.S. scene. Unfortunately, however, their slack has been taken up in the northern tier states by Canadian fabricators who take full advantage of the 15% currency drop in the value of the Canadian dollar vs. the U.S. dollar. (Attached are ten copies of an article covering in more detail the many facets and problems our domestic industry faces in combating imports.)

For the above reasons, we do urge that the Senate Subcommittee on International Trade:

1. Assure itself that the "safeguard" provisions in GATT II permit prompt, remedial action by a designated U.S. government body, when and if import volume threatens the stability and survival of any U.S. industry.

2. Insist that the U.S. negotiators in Geneva withdraw their proposed 30%-40% reduction in U.S. import duties on fabricated structural steel products covered by the following U.S.T.S.A. numbered categories.

[In percent]

	Present U.S. duty	U.S. duty offer to GATT II, Jan. 15, 1978
U.S.T.S.A. No.:		
609.84	6.5	4.4
609.86	8.5	5.3
652.94	3.5	0
652.96	5.5	3.9
652.98	9.5	5.7

The present import duty rates represent only minimal impediments to imports of fabricated structural steel. To cut them in substantial measure to achieve trade negotiating agreement on many other products simply does not make good sense. We feel that the U.S. should make no concessions on present import duties on our products. We trust the Subcommittee will agree and press this point with the U.S. GATT II negotiators.

Notice of the Subcommittee hearings on February 20 and 21 was received from the Commerce Department on February 14. On February 15 we requested by telephone an opportunity to testify at the hearings, but were informed that a written request had to be in the hands of the Subcommittee Staff by 5 PM on the 15th. With our New York headquarters location, this was not possible. We hope this AISC statement, which we enclose 100 copies, will receive full and equal attention and consideration along with the other verbal testimony.

Sincerely,

JOHN K. EDMONDS, *President.*

Enclosures.

WESTINGHOUSE ELECTRIC CORP.,
Washington, D.C., February 21, 1979.

U.S. SENATE,
Committee on Finance,
Dirksen Senate Office Building,
Washington, D.C.

GENTLEMEN: This letter and accompanying memorandum are submitted on behalf of Westinghouse Electric Corporation to assist the Committee in its consideration of legislation to implement the Multilateral Trade Negotiations Code on Subsidies and Countervailing Measures. I would very much appreciate the inclusion of these materials in the printed record of the Committee's hearings on the MTN Codes.

Effective enf rcement of the laws against unfair practices in international trade—and particularly the Countervailing Duty Law and the Antidumping Act—is of major importance to Westinghouse Electric Corporation and to the American electrical equipment industry. Ours is an industry characterized by high fixed costs, where profitability depends on maintaining high levels of capacity utilization. When foreign producers' home market demand falls off, they have aggressively attacked export markets—and particularly the U.S. market, which is the world's largest and least-protected. Often this aggressive export marketing has been accomplished by cutting export prices below home market price levels and even below production costs—in short, by dumping. In other cases, government subsidies play a significant role in these export activities.

Westinghouse has therefore followed with intense interest the current round of Multilateral Trade Negotiations, which for the first time have sought to deal comprehensively with trade problems resulting from the growing use of subsidies by governments around the world. The Subsidies Code, with its detailed prohibitions and limitations on the use of export and domestic subsidies, could be an important step toward fairness in world trade, *if* foreign countries adhere to the new requirements and *if* the United States adopts effective procedures for enforcing its rights and protecting U.S. industries and labor from violations of the subsidy rules.

Those two "ifs" deserve strong emphasis. The new subsidy restrictions were not obtained without a substantial U.S. concession—the weakening of our Countervailing Duty Law by addition of a "material injury" requirement. Moreover, the record of foreign governments in obeying international rules on subsidies is not good. It is thus too early to tell whether the Subsidies Code will be, on balance, a gain or a step backward in protecting American companies and workers from unfair trade practices.

The answer to that question will depend upon the legislation which Congress approves to implement the new Code. The drafting of that legislation presents an historic opportunity to reshape U.S. law into an effective remedy against unfair trade practices, which will assure U.S. industries that meaningful action will be taken when they petition for relief from subsidized imports. This opportunity will be lost, however, if the implementing legislation does not create strong standards which require the government to take effective action in response to valid petitions for relief.

Westinghouse, with the assistance of experienced international trade counsel, has prepared a detailed analysis of the basic requisites for effective legislation to implement the MTM Code on Subsidies and Countervailing Measures. That analysis, submitted herewith, makes 15 major recommendations:

1. It should be made clear that the Code's "material injury" requirement is *less stringent* than the injury test currently being applied under the Antidumping Act. Under the new test, injury should be found whenever the impact of the imports is more than *de minimis*.
2. It should also be clear that the Code is not intended to increase the standard of causality beyond that now contained in the Antidumping Act.
3. Paragraph IF3 of the Code should be clarified, to emphasize that a finding of injury may be predicated upon a sufficient showing as to any one or more of the factors listed in that paragraph.
4. The Code's definition of "like product" should be interpreted in such a way as to permit the International Trade Commission to examine the impact of subsidized or dumped imports on any U.S. industry whose products are competitively affected by those imports.
5. A directive should be given to the Executive Branch that the negotiated settlements referred to in Paragraph IC5 of the Code are not to be utilized in subsidy or dumping cases unless the negotiated settlement fully eliminates the subsidy or the price discrimination, and the Treasury Department must closely monitor all such settlements.
6. Congress should not inject into the Countervailing Duty Law a procedure for preliminary reference to the International Trade Commission. Consideration should be given to deleting the preliminary reference provision from the Antidumping Act.

7. With respect to prior affirmative countervailing duty determinations, whether implemented or waived, there must be either: (*a*) *a* "grandfather clause", exempting those findings from the injury requirements, or (*b*) a lesser injury test.

8. Prior countervailing duty findings based on "domestic" subsidies (e.g., Michelin Tire) must not be abrogated and "domestic" subsidies must continue to be within the scope of the Countervailing Duty Law.

9. Institution of a GATT proceeding by the U.S. Government should be mandatory upon receipt of a proper petition from a U.S. complainant.

10. An advisory committee, composed of personnel of the complaining U.S. industry, should be created in connection with each GATT complaint, to work with the government personnel in formulating and presenting the U.S. case.

11. The Code should be accepted only on the understanding that a subsequent international conference will be convened to create fairness in all aspects of the use of taxes to promote exports—including specifically the remission of VAT and other indirect taxes.

12. A clear statement should be given that nothing in the Code affects the domestic or international legality of DISC, or obligates the U.S. to repeal or amend the DISC legislation.

13. Clear, specific and mandatory rules for the calculation of the amount of a subsidy should be incorporated into the Countervailing Duty Law. Particular emphasis should be placed on rules for calculating "offsets" which reduce the amount of countervailable subsidy. An "offset" should be permitted only where the subsidy is specifically aimed at relieving the burden of an indirect tax or some other financial disadvantage, and only where the amount of the subsidy given to a specific company is calculated on the basis of the indirect tax actually paid or the financial disadvantage actually borne by the recipient company.

14. Both the Countervailing Duty Law and the Antidumping Act of 1921 should be amended to permit counsel for any party to obtain access to confidential data submitted by another party, through the mechanism of a protective order (with sanctions in case of violation) to limit the use of that data.

15. The Countervailing Duty Law should be amended to require full verification of all data that is to be relied upon by Treasury in making its determination, whether that data is submitted by a private party or by a government.

These recommendations have, for the most part, been limited to the Countervailing Duty Law and other issues relating to subsidized imports. Equally important to Westinghouse and to the electrical equipment industry is the Antidumping Act. However, the extent to which that Act will be involved in the MTN legislative package is not known at this time. It is for this reason that systematic Antidumping Act proposals and comments have not been included in the foregoing analysis.

It should be noted, however, that Westinghouse last fall made two specific proposals for the correction of serious defects in the Antidumping Act. In my testimony on September 21 before the Subcommittee on Trade of the Committee on Ways and Means, I urged:

> Amendment of Section 202(a) of the Antidumping Act to require Treasury to enforce the Act against dumped merchandise, even where the exporter or importer seeks to avoid enforcement by selling the dumped article in combination with another article for a single, lump-sum price.
>
> Amendment of Section 201(a) of the Act to require that a finding of dumping be continued in effect until such time as the foreign exporter demonstrates its willingness to cease dumping *and* its ability to sell in the U.S. at fair value. Simple withdrawal from the U.S. market for two years, or any other period, should not be grounds for lifting the finding.

Specific language for both amendments was proposed in my September 21 testimony. In addition, Westinghouse urges amendment of Section 205(c) of the Act—dealing with dumping from Communist countries—to repeal the new regulation on that subject issued by Treasury last year.

If it should develop that the Congress will be considering substantial revision of the Antidumping Act of 1921 during this Session, Westinghouse would appreciate the opportunity of submitting a further and more detailed analysis, focusing specifically on dumping issues.

Sincerely,

CLAUDE E. HOBBS,
Vice President, Government Relations.

Enclosure.

MEMORANDUM: MAJOR REQUISITES FOR LEGISLATION TO IMPLEMENT THE MTN CODE ON SUBSIDIES/COUNTERVAILING MEASURES

The use of governmental subsidies to promote exports is a problem of increasing seriousness in international trade. In particular, the impact on trade of other countries' so-called "domestic" subsidies—subsidies which are not granted specifically upon exports, but which nevertheless give export-oriented foreign companies a significant advantage over their U.S. competitors—has become a critical trade issue.

The Subsidy/Countervail Code is the result of vigorous efforts by the U.S. negotiators to limit the use of subsidies by foreign countries and to create viable international remedies for the United States where foreign subsidies do adversely affect U.S. trade interests. The Code flatly prohibits the use of an extensive list of export subsidies. Developing countries who sign the Code agree to phase out their export subsidies, and it is encouraging to note that Brazil has already agreed to such a phase-out. Finally, signatories to the Code will "seek to avoid" using domestic subsidies in a way which will cause injury or serious prejudice to the trade interests of other countries.

However, the U.S. negotiators were forced to make some serious concessions in order to obtain these restrictions on subsidies. The effect of those concessions would be to limit the ability of the United States to impose countervailing duties on subsidized imports. Countervailing duties could be imposed only upon a determination of "material injury" to the affected United States industry. In addition, the U.S. negotiators agreed to conform the Antidumping Act of 1921 to the new countervailing duty requirements, in terms of the definition of "material injury", the definition of "causality" and the definition of "regional industry".

It is not clear at this point whether this Code represents on balance a gain or a loss in terms of protecting American industry and labor from the effects of foreign subsidies. Before such an assessment can be made, a number of crucial points will have to be clarified in the implementing legislation and/or in the legislative history. In addition, the Congress should take this opportunity to effect several much-needed changes in the Countervailing Duty Law.

I. DEFINITION OF "MATERIAL INJURY"

This issue is of paramount importance, both because it establishes the standard of injury for countervailing duty cases, and because this standard is also to be incorporated into the Antidumping Act of 1921. If "material injury" is a more stringent standard than that which now exists under the Antidumping Act, then the Code will have given away substantially more than it will have gained in terms of protection for American industry and labor. Accordingly, the implementing legislation should make it clear that "material injury" means any injury of any substance whatsoever—anything greater than *de minimis* impact upon the U.S. industry. This issue cannot be left to interpretation at a later date by the International Trade Commission, for two reasons. First, traditional legal theories of statutory interpretation lend themselves to the argument that insertion of the word "material" without further explanation would constitute an intent by the Congress to increase the requisite level of injury. Second, the recent trend to ITC decisions under the Antidumping Act shows a distinct movement toward re-interpreting the injury standard of that Act in a more stringent manner.

II. OTHER CODE-RELATED CHANGES IN THE COUNTERVAILING DUTY LAW

In addition to the "material injury" standard, several other changes effected by the Code in countervailing duty (and thus also Antidumping Act) standards and procedures should be clarified:

A. Causation

Under present Antidumping Act standards, the dumped imports (or subsidized imports, in the countervailing duty context) need not be the sole cause, or even the "substantial" cause of injury suffered by the U.S. industry. Rather, it is sufficient if the dumped (or subsidized) imports are a contributing cause of some significance to the injury which the domestic industry has suffered. The Code, in paragraph IF5, contains a somewhat ambiguous statement on causation:

> 5. It must be demonstrated that the subsidized imports are causing injury to the domestic industry. There may be other factors which at the same

time are injuring the industry, and the injuries caused by other factors must not be attributed to the subsidized imports.

The implementing legislation, or its legislative history, should make clear that this language is intended to work no change—and particularly to create no higher standard of causation—from present practice under the Antidumping Act.

B. Indicia of injury

Paragraph IF3 of the Code sets forth an extensive list of "relevant economic factors" which shall be considered by the International Trade Commission in determining injury in countervailing duty cases. The exhaustive nature of the list is appropriate, because injury from imports can manifest itself in any one or more of a variety of ways. However, the paragraph closes with a somewhat ambiguous sentence: "this list is not exhaustive, nor can one or several of these factors necessarily give decisive guidance". Recent International Trade Commission decisions under the Antidumping Act have shown a disturbing tendency to ignore some criteria of injury (e.g., loss of market share, suppression of prices, etc.) when the affected U.S. industry appears to be doing well in terms of some other indicia (sales volume, profits, etc.). If no clarification is provided, it seems likely that the above-quoted sentence will reinforce that trend. Accordingly, it is important that the Code language be clarified so as to direct the ITC to find injury where a sufficient showing is made as to any one or a combination of the indicia of injury.

C. "Like product"

Under the present Antidumping Act criteria, the ITC examines the impact of imports not only upon U.S. industries producing products which are precisely identical with the imports, but also upon U.S. industries producing similar products which are cross-competitive or competitively affected by the imports. The Code at Footnote 3 on page 9, defines "like product" as a product which is either "identical" or "although not alike in all respects, has characteristics closely resembling those of the product under consideration." This might, under one interpretation, exclude a product which is directly competitive with the imported product, but which is not similar to the imports in physical "characteristics". The implementing legislation, or its legislative history, should make it clear that injury can be found in the form of impact upon an industry which produces a product which is competitively affected by the imported product, even though physically dissimilar. This would in effect, interpret the word "characteristics" in Footnote 3 to include functional and other competitive characteristics as well as physical characteristics. Thus the implementing legislation might contain the following clarifying language: "For purposes of this Act, 'like product' shall include any product whose sales volume or price is affected by competition from the imported product."

D. Negotiated solutions

Paragraph IC5 of the Code provides, in effect, for negotiated solutions of subsidy problems as an alternative to countervailing duties or other unilateral action by the United States Government:

> 5. Investigation or action may be terminated without imposition of countervailing duties or provisional measures either (a) upon reaching an agreement with the exporting signatory that the latter eliminates or limits the subsidy so that it no longer causes injury or (b) upon receipt of a voluntary undertaking by the exporters
>
> (i) to revise their prices so that the investigating authorities are satisfied that the injurious effects of the subsidy are eliminated or
>
> (ii) to cease or to limit the exports of the subsidized product to the area in question
>
> if the authorities concerned consider this practicable, e.g. if the number of exporters or potential exporters of the product in question is not too great and/or if the trading practices are suitable.

It should be made absolutely clear that no countervailing duty cases will be terminated on such a negotiated basis unless the subsidy is entirely eliminated or unless import prices are revised upward by the full amount of the subsidy. Moreover, any such negotiated settlement would have to be monitored carefully by Treasury, and such monitoring poses severe difficulties in the subsidy area. For example, assume that Treasury has determined that an exporter of widgets from country *X* receives a production subsidy equal to 10 percent of the value of the widgets. The exporter submits assurances that its prices will be increased by 10 percent to offset the subsidy, and the case is thereby terminated.

The next year, however, the exporter's cost of production rises 10 percent. Logically, it should increase its prices a further 10 percent, commensurate with the cost increase. But it may not do so. Instead, it may keep its price at the same level, enabled to do so by the 10 percent subsidy. To prevent such evasion, Treasury would have to monitor the costs of the exporter as long as the government of the exporting country maintains the subsidy. This sort of monitoring would be difficult—so difficult, in fact, that it suggests strongly the wisdom of allowing discontinuances only where the foreign government agrees to a complete elimination of the subsidy. Even then, monitoring would be required for a reasonable period (at least two years) to ensure that the subsidy is not reinstituted.

Quantitative limitations as a remedy in the subsidy context are of particularly doubtful value, since a relatively small volume of imports at disastrously low prices can have a significant effect on the price level in the entire U.S. market.

Application of this negotiated settlement approach in the Antidumping Act context would pose equally serious problems. Again, a volume restriction solution would be of doubtful value, for the reason expressed above. Moreover, a negotiated price solution should be acceptable only where prices are raised by the full amount necessary to offset the discrimination, and only where the U.S. Government thereafter monitors import and home market prices to ensure that the negotiated settlement is adhered to.

E. No preliminary reference to International Trade Commission

In 1974, Congress inserted in the Antidumping Act a provision authorizing the Secretary of the Treasury to refer a case at the outset to the International Trade Commission for a preliminary determination whether there is a "reasonable indication" of injury to the U.S. industry. That provision has worked badly In an apparent desire to "turn off" as many dumping cases as possible, Treasury has made frequent use of the new provision. Far too many cases have been referred to the ITC, as evidenced by the fact that the Commission has refused to terminate the investigation in the great majority of the preliminary references. Many complainants, in fact, feel that Treasury has been using this provision as a means of discouraging the bringing of cases. The preliminary reference certainly does act as a discourageemnt to potential complainants. The addition of another set of prehearing briefs, questionnaire responses, hearing and posthearing briefs can easily add $50,000 to the cost of the case for each participant—U.S. complainants and foreign respondents alike. To these costs must be added the waste of ITC resources in handling the far too numerous referencs made by Treasury. For all these reasons, no "preliminary reference" device should be incorporated in the Countevailing Duty Law, and Congress should give serious consideration to deleting this provision from the Antidumping Act.

III. OUTSTANDING COUNTERVAILING DUTY FINDINGS

At present, there are some 35–40 outstanding countervailing duty findings, together with a smaller number of cases in which countervailable subsidies were found, but imposition of duties was "waived" pending completion of the MTN. The Code appears to contemplate that there could be no prospective imposition of duties in these cases unless a finding of "material injury" is made in each case.

That poses such severe problems that it could well mean eradication of all of these findings from the books. Assume, for example, that the Treasury Department in 1970 found that Morocco was granting a 30% export subsidy to its widget manufacturers, and that the United States has been imposing countervailing duties of 30% ever since. One of two things has happened. Either the imports of Moroccan widgets have declined because of the 30% extra duty, or the imports have not declined. If the imports have declined, the U.S. industry may have serious trouble in 1979 showing "material injury". It will be relegated to an atempt to show likelihood of future material injury—an approach which has a very low "batting average" at the International Trade Commission. On the other hand, if the widget imports have not declined, the ITC would be quite likely to determine that there was no cause-and-effect relationship between the Moroccan subsidy and any injury or likelihood of injury to the U.S. industry. In either case, a negative determination would probably come out of the ITC, and the countervailing duty would have to be terminated. It is important, therefore, that outstanding countervailing duty findings not be made subject to the "material injury" test, at least in its full extent. One solution would be a "grandfather clause, exempting these prior findings entirely from the new injury requirement. Failing this, thought should be given to establishing some substantially lesser criterion of injury to be applied to these prior findings.

A related question concerns those prior findings which involve "domestic" subsidies. The *Michelin Tire* case is a prime example, where duties are being assessed to offset regional development grant subsidies given by Canada and Nova Scotia to a tire production plant whose output is destined almost entirely for the United States market. Although there is substantial ambiguity on this point, it is possible to interpret the Code as permitting imposition of countervailing duties only upon "export" subsidies, with relief from "domestic" subsidies obtainable only through the GATT procedures for resolution of international disputes. If this reading of the Code were to be adopted in the implementing legislation, the *Michelin* finding and others like it would have to terminated automatically, and the Countervailing Duty Law would henceforth be inapplicable of export or domestic subsidies. That panel, moreover, would have to render its tional trade. The implementing legislation should make it clear that the Countervailing Duty Law remains applicable to all subsidies, whether "export" or "domestic".

IV. GATT COMPLAINT PROCEDURES

One of the great strides made by U.S. negotiators was the strengthening of the GATT dispute resolution procedures in subsidy cases. Under the Code, the United States would have a right to obtain the convening of a GATT panel to resolve a complaint submitted by the U.S. as to any other GAT signatory's use of export or domestic subsidies. That panel, moreover, would have to render its decision within specified time limits. Thus, the United States will now be in a position to force a decision as to the legality of any other country's use of a subsidy.

The Code, however, leaves entirely open the question whether the United States Government would be required to institute proceedings under GATT in response to legitimate complaints by aggrieved U.S. industries, or whether the institution of such complaints would be entirely discretionary upon the part of the government. Obviously, if the U.S. Government can refuse to proceed even where the U.S. industry's complaint makes out a serious case of subsidization and it appears that U.S. industry and labor are indeed being adversely affected, the effectiveness of this channel for relief is largely vitiated. Many domestic industries feel that the record of our Government in being willing to press sensitive subsidy issues in international proceedings is inconsistent at best.

It is therefore of critical importance that the initiation of a GATT proceeding by the U.S. Government be mandatory in response to the filing of a proper complaint. In this regard, it should be emphasized that this is an issue which transcends the Subsidy/Countervail Code, and encompasses all of the MTN Codes. Rules requiring fair treatment and non-discrimination in standards, government procurements, customs valuation, safeguards and other areas are of scant benefit to U.S. companies and workers if the U.S. Government can refuse to institute enforcement proceedings because of diplomatic or other considerations not related to the merits of the issue.

It is also important that the complaining U.S. industry be assured an opportunity to participate fully in the international proceedings. Analysis of the nature and impact of subsidies involves complex technological and commercial questions which government personnel will be unable to handle adequately without close cooperation with personnel from the effected U.S. industry. In past practice, industry personnel have been excluded from the international deliberations and the United States' advocacy has suffered as a consequence. The implementing legislation should provide for the creation of an advisory committee to work with the government in formulating and presenting the U.S. position in the international proceedings.

V. TAX SUBSIDIES

The use of tax-related benefits as a means of subsidizing exports was a major concern of the Congress in granting negotiating authority for the Tokyo Round. In almost identical language, both the House Committee on Ways and Means and the Senate Committee on Finance, in reporting on the Trade Act of 1974, directed the Executive Branch to use the negotiating authority to bring about a revision of the international rules on the use of tax devices to subsidize exports:

Your committee also believes that GATT provisions on tax adjustments in international trade should be revised to ensure that they will be trade neutral. Present provisions permit adjustments on traded goods for certain indirect taxes but not for direct taxes. The Committee expects that the President will seek such modification of present rules as would remove any disadvantage to countries like the United States relying primarily on direct taxes and put all countries on an equal footing.

In this area, the Code comes up short. There are, included within the list of prohibited export subsidies, numerous specific types of direct-tax remissions or benefits, but this specificity does not appear to add much to previous GATT rules (except that it arguably increases somewhat the risk that the U.S. might at some point have to abandon DISC, as discussed below). With respect to the more fundamental problems of indirect tax remissions—the problem with which the Congressional Committees were obviously more concerned—no headway whatsoever has been made. There is some discussion in the Code of a possible subsequent international conference on use of taxes to subsidize exports, but it appears that this is intended to relate only to direct taxes. Accordingly, the implementing legislation should make it clear that this is not acceptable to the United States, and that this Code is accepted by the U.S. only on the understanding that a subsequent conference will be convened to discuss *all* tax benefits used to promote exports—including the remission of value-added taxes and other indirect taxes.

There remains the issue of DISC. The Office of the Special Representative for Trade Negotiations interprets the Code as preserving the status quo on DISC, despite the inclusion of direct tax "deferral" in the Annex A Illustrative List of Export Subsidies. While this appears to be an acceptable reading of the Code language, the wording is sufficiently unclear that the matter should be clarified in the implementing legislation and/or its legislative history. In writing the legislation, a clear and unambiguous statement should be made that nothing in the Code affects the domestic or international legality of DISC, or obligates the United States to repeal or amend the DISC legislation.

VI. ELIMINATION OF EXISTING DEFECTS IN THE COUNTERVAILING DUTY LAW

In addition to the foregoing issues which relate directly to the Subsidy/Countervail Code, Congress should take this opportunity to remedy three major shortcomings of the present Countervailing Duty Law:

A. Rules for calculating amount of subsidy

The Treasury Department has consistently maintained, contrary to the apparently mandatory language of the statute, that it needs "flexibility" in enforcing the Countervailing Duty Law. What Treasury means by this is that it wants to be able to refrain from full enforcement of the law when full enforcement would be politically or diplomatically undesirable. Since the statute itself provides no such "flexibility", Treasury's practice has been to reach its desired result in a given case by manipulating the calculation of the subsidy.

This type of "flexibility" is wholly inappropriate in a statute dealing with an unfair practice in international trade. U.S. complainants need to know that they will obtain relief if a subsidy is shown and that the relief they obtain will fully counteract the subsidy. Accordingly, Congress should incorporate in the statute specific, mandatory rules governing the calculation of the amount of subsidy.

It is beyond the scope of this memorandum to set forth comprehensive rules for the calculation of subsidies. However, there is one area which warrants particular attention. Treasury often reduces the amount of countervailing duty by deducting an "offset" from the amount of the subsidy. This is done, for example, in many cases involving use of tax benefits to subsidize exports. Spain grants a payment to certain exporters called the "desgravacion fiscal", equal to 13 percent of the value of the exported product. To create an appearance of legality under GATT rules, Spain styles this subsidy as a "rebate" of indirect taxes paid by the exporter. In fact, the desgravacion fiscal is not a rebate at all. It is not based on any computation of the indirect taxes actually paid by the exporter receiving the payment. Indeed, an exporter receives the full 13 percent payment even if (because of various exemptions) he paid no indirect taxes whatsoever. Yet Treasury, instead of assessing a 13 percent countervailing duty to counteract the desgravacion fiscal, allows the Spanish Government to compute an "offset" of about 9 percent by adding up all of the indirect taxes which a hypothetical exporter might conceivably be required to pay. Deduction of this "offset" reduces the countervailing duty to about 4 percent, thus depriving affected U.S. industries of adequate relief. To prevent such inequitable results—results contrary to both the letter and the intent of the law—the law should be amended to permit an offset only where (a) the subsidy is specifically designed to relieve the exporter of the tax or other financial disadvantage upon which the offset is based, and (b) the amount of subsidy received by each individual exporter is calculated on the basis of the amount of tax or other financial disadvantage borne by that exporter.*

B. Access to data through protective orders

One of the major impediments to effective enforcement of both the Countervailing Duty Law and the Antidumping Act of 1921 is the inability of U.S. complainants to participate effectively in the Treasury's investigative process. The reason is that complainant's counsel is deprived of any meaningful access to the data gathered in the course of the investigation. What happens is that the foreign governments and foreign exporters designate substantially all price, cost and subsidy submissions as "confidential data". Treasury requires the foreign parties to submit non-confidential summaries of this data, but the summaries are far too generalized to permit the U.S. complainant to participate effectively. As a result, the Treasury Department is deprived of assistance from any domestic source having expertise in the pro uct and the market to which the investigation relates.

The solution to this problem is not difficult. Counsel to the U.S. complainant could be permitted full access to the investigative data under a protective order. That order would require counsel not to disclose the data to other persons, except to experts and consultants who would also be required to sign the protective order. Such protective orders are regularly used in court litigation. This solution has been proposed to Treasury on several occasions, but has been consistently rejected on the ground that Treasury has no means of enforcing the protective orders. That objection, of course, is easily overcome by legislative action. The Congress should add to both the Countervailing Duty Law and the Antidumping Act a provision that counsel for any party shall be permitted full access to all confidential data submitted to Treasury, provided that counsel and any necessary experts or consultants sign an appropriate protective order containing stiff sanctions for violation of the order. This protective order procedure should be applicable to the duty assessment phase of the proceeding as well as to the investigation phase.

C. Verification of data submitted by foreign governments

Where information is submitted by a foreign company in a dumping or countervailing duty investigation, the Treasury Department uniformly takes the position that it will accept the data only after representatives of the Customs Service have "verified" the accuracy of that data.* However, Treasury categorically refuses to conduct any verification of data submitted in a countervailing duty case by a foreign government, even though that is the very data on which the final determination must be based. Treasury apparently feels that it is not diplomatically appropriate to question the veracity of a government.

In a recent case involving imports from Uruguay, Treasury's no-vertification policy almost resulted in a serious error. The Uruguayan government informed Treasury that it was phasing out a subsidy which had been the subject of the countervailing duty investigation. The U.S. complainant questioned the undertaking, alleging that the Uruguayan subsidy was in fact not being decreased. Treasury, however, refused to question or verify the Uruguayan government's statements until the complainant produced data published domestically by the

---

*Thus Spain could, without exposure to countervailing duty, give to its exporters a true rebate of their indirect taxes. However, the rebate paid to each exporter would have to be individually calculated on the basis of the amount of indirect taxes actually paid by that exporter.

*A related problem is that Customs' verification procedures are far from adequate. Generally, a single Customs repesentative visits the foreign company's plant and conducts a very rudimentary spot check of the records. This "verification" is wholly inadequate as to any cost data or data of a technologial nature, and in many cases is not adaquate even in checking prices. Suppose, for example, that the foreign produer in a dumping case only furnishes half of its home market sales (the lower-priced half, of course). The Customs representative could discover this deception only by a thorough check of all of the company's invoics—an impossibility for one man. Instead, Customs should be required in each case to send an investigative team to the foreign coutnry, composed of a Customs representatire, an accountant, a person technologically and commercially familiar with the product and—where necessary—a computer expert.

Uruguayan government which showed that in fact the subsidy was being increased.

No one can know whether the result in other countervailing duty cases would have been different if there had been a way of checking the data submitted by foreign governments. It should be observed that verification in dumping cases has frequently uncovered substantial inaccuracies in the information submitted by foreign exporters. The Uruguayan case suggests the possibility that verification of foreign governments' submissions might also reveal inaccuracies, at least in some cases. Accordingly, the Countervailing Duty Law should be amended by adding a provision requiring full verification of all information that is to be relied upon by Treasury in making its determination, whether that information is submitted by a private party or by a government.

THE SOCIETY OF THE PLASTICS INDUSTRY, INC.,
New York, N.Y., April 23, 1979.

Re written statement of The Society of the Plastics Industry, Inc. submitted to the Subcommittee on International Trade, Senate Finance Committee, regarding implementation of the Multilateral Trade Negotiations.

Mr. MICHAEL STERN,
Staff Director, Senate Committee on Finance,
Dirksen Senate Office Building, Washington, D.C.

DEAR SIR: This statement is being submitted by the International Committee of The Society of the Plastics Industry, Inc. (SPI) in response to the opportunity extended by the Subcommittee on International Trade, Senate Finance Committee. SPI, by this statement, wishes to address issues regarding implementation of The Multilateral Trade Negotiations, and believes that its position is consistent with those of ISAC #5—Chemicals—and ISAC #8—Plastics and Rubber.

By way of introduction, The Society of the Plastics Industry, Inc., is composed of over 1400 companies which supply raw materials, process or manufacture plastics or plastics products, engineer or construct molds or accessory equipment for the plastics industry, and engage in the manufacture of plastic machinery. The Society is the major national trade association of the plastics industry, its membership being responsible for more than three-fourths of the total dollar volume of industry sales in the United States. The International Committee of SPI is comprised of over 70 U.S. companies engaged in international trade in plastic markets, including resins, basic fabricated products, and processing machinery.

In reviewing the current information on levels of proposed tariff reductions and descriptions of non-tariff codes, we feel that the OSTR with the assistance of the Advisory Committee has done an excellent job of seeking out the problems and working with the negotiators to draft appropriate provisions in the codes which cover the important areas.

There is, of course, a broad gap between reaching general agreement on a subject and delineating the mechanisms by which the adoption of such codes can be implemented by the members of the GATT. Because these will have to be delineated and implemented before we really know the effects on U.S. plastics producers, it is important that this be done carefully to protect the rights of U.S. producers and traders.

We feel that implementing legislation should be worded in a manner to make the broad language of the codes more precise and the authority more specific in its impact. This is particularly true because of the tendency for government and industry in the U.S. to have an adversary position, whereas abroad the relationship tends to be more cooperative. Thus, industry in the U.S. needs to have the areas of uncertainty more clearly defined to avoid the adverse effect of vague measures, but at the same time not restrict U.S. industry to a greater extent than our trading partners.

We favor the use of Industry Advisory Committees comprised of people familiar with foreign trade and the terms used in the negotiations to provide guidance so that these more precise wordings do not have counterproductive impacts.

The American plastics industry and the machinery industry supplying processing equipment have long been successful in the export market, but, while many of these sales continue to rise in dollar value, the rising prices conceal a leveling out in volumes and a sharp decrease in the percentage of total world export markets supplied.

It is for these reasons that we are concerned that provision be made for a supportive element in the U.S. government which can be understanding of the problems of exporters and be active in assistance to them. The legislation being designed to implement the trade agreement, should be more facilitative than restrictive for U.S. plastics producers.

Experience in trading in plastics, fabricated products, and equipment has given many in the industry a deep comprehension of the importance of tariffs and non-tariff measures of U.S. practices, such as DISC, export-licences, and other U.S. provisions ,and the relative value of the non-tariff measure codes, which have been achieved at the MTN. The following comments concerning some of the codes most important to the plastics industry are based on this experience:

Subsidies and countervailing duties

The tariff changes negotiated will have more impact than the non-tariff barriers in our trade with some countries. In other countries both the conventional non-tariff restrictions and very subtle forms of producer-trader financing organizations and government "manipulation" have made exports from the U.S. to such countries difficult. Because of such circumstances "de facto" barriers to trade not specifically seen as direct subsidies should be considered in the implementing legislation as cause for complaint.

Another serious problem is that of the trend in world plastics industries toward government ownership of producing and marketing facilities. These industries diverge from the principles by which free enterprise operates, and eventually are subsidized by the governments owning them. In other cases, where governments own the supplies of basic feedstocks such as petroleum or natural gas, artificially low prices for these can result in unfair competition. Because of these factors, we feel that a strong Subsidy-Countervailing duty code is essential.

Our government must also take a serious and concerned approach to the administration of its trade laws and the behavior of our trading partners under the Agreement. Actions on subsidized imports should be taken without delay—and applied in a firm and equitable manner against all named countries.

We believe the following provisions should be included in the code:

1. Flat prohibition against export subsidies.
2. Tightened rules on settlement of disputes.
3. Recognition of harmful effects of domestic subsidies.
4. Improved visibility of subsidy practices.
5. The requirement of proof of injury appears unnecessary and should be made minimal.
6. Imports from nonsignatory countries and less developed countries should receive comprehensive treatment and include sufficient specificity.

We therefore recommend:

1. The imposition by the U.S. of countervailing duty should, where damaging subsidies can be shown to exist, be mandatory rather than voluntary.
2. The injury test criteria for both antidumping and escape clause actions should be based on injury that is greater than immaterial or inconsequential.
3. Cases involving injurious exports from state owned, state controlled, or state aided industries should be based on comparable cost data from constructed value determinations of the most similar country with private enterprise.
4. The criteria for determining a country's degree of development should be based on a sector rather than the country's entire economy.
5. The definition of U.S. domestic industry should be such as to permit one of more products or locations to qualify as a separate industry if they have specific features that clearly identify them as separate from others.

Valuation code

One of the principal features of the proposed valuation code is the elimination of the American Selling Price (ASP). We do not feel (without knowing the *quid pro quo* for giving up ASP) we can endorse its acceptance until we know:

(1) The tariff levels,
(2) The benefits which have been obtained in exchange, and
(3) A proper conversion of rates to their post ASP equivalents.

If the problems with ASP can be settled satisfactorily, it will be important to eliminate undesirable wording or add footnotes to prevent the "uplift of valuation" by countries to which plastics exports are shipped. If this is done, the plastics industry will support the implementation of the code.

Safeguards

Disruption of U.S. plastics markets by foreign government-owned plants and other sources which have not been found to provide cause for action under anti-dumping or countervailing duty laws, should be covered under this code.

We feel that in wording the implementing legislation, the definition of domestic industry should be worded in such a way that a single product or area can qualify as the U.S. industry in question if factors do in fact result in it being so affected. It should also cover products "like or directly competitive with" products affected.

Summary

The SPI International Committee, having review publicly available information on the tariff reductions and non-tariff codes, endorses both aspects of the MTN treaty. Assuming no radical changes in the final negotiations, we believe that our sector will gain substantially equivalent competitive opportunity by passage of the treaty with appropriate implementing legislation by the Congress.

Respectively submitted,

David S. Weil,
Chairman, International Committee.

O